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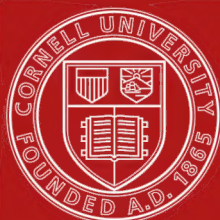
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THE LAW OF INTERSTATE RENDITION

Erroneously Referred to as
INTERSTATE EXTRADITION

A TREATISE

ON THE ARREST AND SURRENDER OF FUGITIVES FROM THE
JUSTICE OF ONE STATE TO ANOTHER;

THE REMOVAL OF FEDERAL PRISONERS FROM ONE DISTRICT
TO ANOTHER;

AND THE EXEMPTION OF PERSONS FROM SERVICE OF CIVIL
PROCESS;

WITH AN APPENDIX

OF

THE STATUTES OF THE STATES AND TERRITORIES ON
FUGITIVES FROM JUSTICE

BY

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SHERMAN HIGHT,

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By

JAMES A. SCOTT.

P R E F A C E

The subject of Interstate Rendition is not a new branch of the law, in fact, from the earliest period of the governmental existence of the country, the arrest of fugitive criminals and their return to the jurisdiction where the alleged crime is charged to have been committed, has been one of paramount and growing importance, commanding, at all times, the best efforts of the officials of both the demanding and surrendering States, that the law might be faithfully and fairly executed. The safety of society and the maintenance of law and order demand that no State, Territory or Possession of the United States, shall, under any circumstances, afford an asylum where this class of criminals shall be immune from prosecution and punishment for crimes committed. And although this proposition is fundamental in its very nature, nevertheless, any legislation or judicial decisions which give *undue force* to the right of the State to arrest, surrender and deport the alleged fugitive is objectionable, more or less. Daniel Webster, a great lawyer in his day, must have had this thought in mind in defining the meaning of "due process of law", to be, "a law which hears before it condemns, which proceeds upon inquiry, and renders judgment *only* after trial".

As stated elsewhere in this work, the arrest and surrender of a fugitive from the justice of one State to another, is controlled entirely by the Constitution and laws of the United States on this subject, and hence, no question arising thereunder is finally and authoritatively settled until the Supreme Court of the United States has passed upon the same. During the past fifty-five years, from the case of *Kentucky v. Dennison*, (1860), down to the case of *Innes v. Tobin*, (1916), that court has settled many of the questions upon which there has been a noticeable lack of harmony in the different State court decisions. The grouping of these Supreme Court cases in Chapter XXI, enables one to see and determine, at a glance, just what that court has decided is the law in Interstate Rendition.

In the preparation of this work the author's labors have been directed toward the production of a treatise, simple, accurate and helpful to the busy lawyer, who may be called upon to resist, by court procedure, the deportation of one charged with being a fugitive from justice.

The works on this subject by Spear, Moore and Hawley, were published more than twenty-five years ago, and many of the authorities cited as law therein, have been overruled in later cases; there-

fore, there is an urgent necessity of a work on Interstate Rendition, modern and up-to-date.

An experience of several years in the office of the State's Attorney, of Cook County, Illinois, as an Assistant in charge of habeas corpus and rendition, brought to the author's attention the need of such a work, based on the *latest* court decisions, legislative enactments and rules of practice, pertaining to this branch of the law. It should not be inferred that the following pages are specifically from a prosecuting officer's standpoint, and solely for their benefit and guidance, a cursory glance at the table of contents, will prove the converse to be true.

JAMES A. SCOTT.

Reaper Block,

Chicago, Illinois.

June, 1917.

TABLE OF CONTENTS

CHAPTER I.

INTRODUCTION.

	PAGE.
§ 1. Rendition, not "Extradition".....	1
§ 2. Seven Fundamental Points of Difference.....	2-4
1. Source of Authority.....	2
2. Action how Effected.....	2
3. Charge of Crime.....	3
4. Extraditable Offenses	3
5. Crimes for which Fugitive may be Tried.....	3
6. Political Offenses	3
7. When Right to Surrender of Fugitive is Absolute..	4
§ 3. Authorities Sustaining the Author's Position.....	5
§ 4. Early Disputes on Rendition.....	5
§ 5. President Washington Ends Controversy.....	6-7
§ 6. Court Rulings Follow Disputes.....	8
1. "Treason, Felony, or Other Crime," Defined.....	8
2. Duty of Executive of Asylum State.....	9
3. Asylum Executive no Discretion.....	9
4. Word "Duty," in Act of 1793 Defined.....	9
5. No Power to Force Governor to Honor Requisition.	9
§ 7. Kentucky v. Dennison, Supra, its Authority Considered..	9
§ 8. The U. S. Supreme Court Ruling Controls.....	10
§ 9. Power of States to Arrest and Surrender Fugitives....	10
§ 10. Slavery and Rendition.....	11
§ 11. Unadjudicated Questions	12

CHAPTER II.

THE CONSTITUTION AND RENDITION.

§ 12. Constitutional Provision	13-14
§ 13. Rendition Historically Considered.....	15
§ 14. Fugitives under the Confederation and Constitution....	16
§ 15. Distinction between Rendition and Extradition.....	17
§ 16. An Additional Interpretation by the Highest Court.....	18-19
1. Judicial Supremacy	19
2. Congressional Authority	19-20
§ 17. The General Government and the States.....	20
§ 19. Offenses and Rendition.....	21

CHAPTER III.

CONGRESSIONAL LEGISLATION

	PAGE.
§ 20. The Origin and Purpose.....	23
§ 21. The Act of Congress of February 12, 1793.....	24
§ 22. The Law as in U. S. Revised Statutes.....	25
§ 23. Randolph's Ideas Adopted by Congress.....	26
§ 24. No Debate in Congress when Bill Passed.....	26
§ 25. Randolph's Interpretation of the Constitution on Inter- state Rendition	27-30
1. "A Person Charged"	27
2. "Or Other Crime".....	28
3. "Who shall Flee from Justice".....	28
4. "Found in another State".....	29
5. "The State having Jurisdiction".....	29
§ 26. The Act of Congress of 1793 Constitutional.....	30

CHAPTER IV.

FUGITIVES AND THE DISTRICT OF COLUMBIA.

§ 27. Special Law by Congress.....	31
§ 28. Return of Fugitives to the District of Columbia.....	32
§ 29. The General Removal Law.....	33
§ 30. The Method, though Sustained by the Supreme Court, is yet Open to Criticism.....	33
§ 31. Is the District of Columbia a "district" within the Mean- ing of Section 1014?.....	34
§ 32. Had Congress Muddled the Whole Matter?.....	35
§ 33. Even the Senate Judiciary Committee Denied its Val- idity	36
§ 34. Sec. 1014 as Expounded by a Federal Judge.....	37-42

CHAPTER V.

LEGISLATION BY THE STATES.

§ 35. Federal Law Supreme.....	43
§ 36. The Right of States to Legislate.....	44
§ 37. The Law Prior to the Confederation and Constitution.....	45
§ 38. The Federal Supreme Court on State Legislation.....	46
§ 39. State Power to Legislate as Viewed by State Supreme Courts	47-54
a. Massachusetts	47-48
b. New York	49
c. Ohio	50

	PAGE.
d. Nevada	50
e. Virginia	51
f. Alabama	51
g. Indiana	51-52
h. North Carolina	52-53
i. Texas	53
j. California	53-54

CHAPTER VI.

EXECUTIVE DUTY AND POWER.

§ 40. Origin of Executive Duty.....	55
§ 41. Statute Strictly Construed.....	56
§ 42. No Delegation of Power.....	57
§ 43. Extent of Executive Authority.....	58
§ 44. Governor Cullom on Executive Duty.....	59-61
§ 45. Conditions Precedent to Honoring Requisitions.....	61
§ 46. The Demand Discretionary with the Governor.....	62
§ 47. The Surrender—No Discretion with Governor.....	62-63

CHAPTER VII.

WHO ARE FUGITIVES FROM JUSTICE?

§ 48. Misconception of the Law.....	64-67
§ 49. Executive Carelessness	67
§ 50. Persons held to be Fugitives.....	68-69
§ 51. The Fugitive Doctrine Discussed.....	70
§ 52. A Noticeable Difference of Opinion.....	71
§ 53. A Final Determination by the Supreme Court.....	72-74
§ 54. A Waiver of Jurisdictional Defects.....	75
§ 55. "Constructive Presence"	75-76
§ 56. Presence in State when Crime is Committed Necessary..	77
§ 57. Unreasonable Conclusion by the Supreme Court.....	78
§ 58. A Celebrated Case.....	79-81
§ 59. A summary of Supreme Court Decisions.....	81-83
1. A Fugitive from Justice.....	81
2. Demand for his Arrest and Surrender.....	82
3. Proof of Crime and Flight Essential.....	82
4. Executive Determination	82
5. <i>Prima Facie</i> Case.....	83
6. <i>Habeas Corpus</i> a Proper Remedy.....	83
7. Legality of Arrest and Detention.....	83
§ 60. An Escaped Convict or Person under Parole, when a Fugitive	83-84

	PAGE.
§ 61. A Late Decision by the Supreme Court.....	84-85
§ 62. The Earlier Cases of Flight.....	85-86
§ 63. Rendition of Witnesses.....	86-88

CHAPTER VIII.

THE REQUISITION.

§ 64. The Demand and its Requisites.....	90-91
§ 65. The Rule as Fixed by the Supreme Court.....	91
§ 66. Executive Discretion	91-92
§ 67. Authority of Governor of Asylum State.....	92
§ 68. Review by Courts of Governor's Finding.....	93
§ 69. The Requisition must be Accompanied with Other Papers.....	94
§ 70. Authority of States Involved.....	95
§ 71. A Requisition Based on Forgery.....	95-96
§ 72. State Fees and State Regulations.....	96-123
1. Alabama	97
2. Arizona	98
3. Arkansas	98
4. California	98-100
5. Colorado	100
6. Connecticut	100
7. Delaware	100
8. Florida	100
9. Georgia	101
10. Idaho	101
11. Illinois	101
12. Indiana	101
13. Iowa	101-102
14. Kansas	102
15. Kentucky	102
16. Louisiana	102
17. Maine	102
18. Maryland	102-104
19. Massachusetts	104
20. Michigan	104
21. Minnesota	104
22. Mississippi	104
23. Missouri	104
24. Montana	105
25. Nebraska	105
26. New Hampshire	105
27. New Jersey	105
28. New Mexico	105
29. Nevada	105

TABLE OF CONTENTS.

ix

	PAGE.
30. New York	105
31. North Carolina	105
32. North Dakota	105
33. Ohio	105-109
34. Oklahoma	109
35. Oregon	109-111
36. Pennsylvania	111
37. Rhode Island	111-113
38. South Carolina	113
39. South Dakota	113
40. Tennessee	113
41. Texas	113
42. Utah	113
43. Vermont	113-116
44. Virginia	116
45. Washington	116
46. West Virginia	116-119
47. Wisconsin	120-122
48. Wyoming	122
49. District of Columbia.....	122
50. Alaska, Territory of.....	122
51. Hawaii, Territory of.....	122
52. Porto Rico	122
53. Philippine Islands	122

CHAPTER IX.

AUTHENTICATION.

§ 73. "Certified as Authentic".....	124
§ 74. Force and Effect of Authentication.....	124-125
§ 75. The Governor's Power and Authority.....	125-126
§ 76. The Purpose of Authentication.....	126-127
§ 77. Presumptions	127-128

CHAPTER X.

THE CHARGE OF CRIME.

§ 78. Fundamental and Jurisdictional.....	129
§ 79. The Charge must be by Indictment or Affidavit.....	130
§ 80. Validity of an Information as a Charge of Crime.....	131
§ 81. The Supreme Court's Estimate of an Information.....	132
§ 82. An Extra Judicial Opinion.....	133-134
§ 83. The Constitution and Act of Congress Construed together.....	135
§ 84. The Decision in the Hart Case Sound in Reason.....	135-142
§ 85. An Indictment as an Accusation.....	142
§ 86. The Supreme Court on a Charge by Indictment.....	143-144

	PAGE.
§ 87. The Date when Crime is Committed.....	144-145
§ 88. The Right to Examine Indictment or Affidavit as to Legality	145
§ 89. Delay in Preferring Charge of Crime.....	146
§ 90. A Formal and Sufficient Charge Necessary.....	147
§ 91. An Affidavit as a Charge of Crime.....	148-150
§ 92. Insufficient Affidavits	150
§ 93. Affidavits upon Information and Belief.....	150-152
§ 94. Attempt to Evade Federal Law.....	152-154

CHAPTER XI.

THE GOVERNOR'S WARRANT.

§ 95. Essentials of the Process.....	155-156
§ 96. Must be Legally Issued.....	156-157
§ 97. Its Recitals Evidence of Legality of Issuance.....	157
§ 98. Who May Serve Warrant.....	158
§ 99. Entitled to no Greater Sanctity than other Process.....	158-159
§ 100. Revocation and Alias Warrants.....	159
§ 101. Rules Relating to the Governor's Warrant.....	160

CHAPTER XII.

THE ARREST OF THE FUGITIVE.

§ 102. The Recognized Rule.....	161-162
§ 103. Arrest Before Demand, with or without Warrant.....	162-163
§ 104. Official Courtesy and Unlawful Arrests.....	163-164
§ 105. Arrest from a Constitutional Viewpoint.....	164-165
§ 106. Duty of Officer Making Arrest.....	165-167
§ 107. Summary	167

CHAPTER XIII.

IDENTITY OF THE FUGITIVE.

§ 108. In Rendition Identity of Fugitive all Important.....	168
§ 109. Identification of Fugitive in New York.....	169-171
§ 110. Identification of Fugitive in Pennsylvania.....	171-173
§ 111. Identification of Fugitive in Indiana.....	173-174
§ 112. Identification of Fugitive in Ohio.....	174-175
§ 113. Identification of Fugitive in Kentucky.....	176
§ 114. Identification of Fugitive in Delaware.....	176
§ 115. In other States Fugitive is Protected by <i>Habeas Corpus</i> , One Exception	177
§ 116. Question of Identity how Raised.....	177
§ 117. In Absence of Proof <i>Prima Facie</i> Case Conclusive.....	178
§ 118. Judicial Protection of the Accused.....	179

CHAPTER XIV.

THE RIGHT OF ASYLUM.

	PAGE.
§ 119. The Origin of this Doctrine.....	180
§ 120. The First Compact (1643).....	181
§ 121. The Second Compact (1670).....	182
§ 122. The Third Compact of Articles of Confederation (1778).....	183
§ 123. The Fourth Compact, the U. S. Constitution (1789).....	184
§ 124. No Immunity from Criminal Prosecution.....	185
§ 125. Judge Cooley on Immunity.....	186
§ 126. An Author's Error.....	187
§ 127. Lascelles' Case the Rule in all States.....	188
§ 128. Method of Return not Open to Complaint.....	189-191
§ 129. A Noted Illinois Case.....	191
§ 130. The Court's Ruling in the Lascelles' Case.....	192-194
§ 131. Extradition and Rendition, the Difference.....	194
§ 132. Courts in Accord on the Lascelles' Ruling.....	195
§ 133. Michigan Abandons her Former Position.....	195
§ 134. Abuse of Power; Oppression.....	196

CHAPTER XV.

EXEMPTION FROM SERVICE OF CIVIL PROCESS.

§ 135. Origin of Right.....	197
§ 136. Returned Fugitive and Civil Process.....	198
§ 137. Induced by Fraud to Return and Civil Process.....	199
§ 138. Suitors and Witnesses Entitled to Immunity.....	200
§ 139. Exemption as Viewed by the Court of Appeals of New York	201-202

CHAPTER XVI.

PROOF OF ALIBI TO DEFEAT RENDITION.

§ 140. Preliminary Observations	203
§ 141. Proof of Alibi a Distinction.....	204
§ 142. The Inadmissibility of Alibi Testimony.....	204-206
§ 143. The Supreme Court of New York on this Question....	206-215
1. Statement of Case.....	206-208
2. Determination of Particular Issues.....	208-210
3. Previous Decisions as Controlling.....	210-214
4. Weight and Sufficiency of Evidence.....	215

CHAPTER XVII.

FOOD FAITH OF THE PROSECUTION.

§ 144. Scope of Inquiry in the Asylum State.....	216
§ 145. Questions for the Governor's Consideration.....	217

	PAGE.
§ 146. May the Governor or Courts Look Beyond the Records?.....	217-220
§ 147. A Noted Case and a Fearless Judge.....	221-223
§ 148. Ruling of the Michigan Supreme Court.....	223
§ 149. No Rendition Unless Good Faith is Shown, Ohio Rule.....	224-228

CHAPTER XVIII.

GUILT OR INNOCENCE OF FUGITIVE.

§ 150. No such Inquiry on <i>Habeas Corpus</i>	229
§ 151. Hearing Limited in Florida.....	230
§ 152. When Proof of Crime is Prohibited.....	230
§ 153. Other Decisions on the Subject.....	231
§ 154. Affidavit Showing no Crime—no Rendition.....	232
§ 155. The Offense must be Plainly Charged.....	232
§ 156. The Effect of Court Ruling.....	233
§ 157. The Court often Misled.....	233
§ 158. Federal Rule Reasonable.....	234

CHAPTER XIX.

POWER TO REVIEW BY HABEAS CORPUS.

§ 159. Jurisdiction of the Judiciary.....	235-237
§ 160. Federal Law on Rendition Silent as to <i>Habeas Corpus</i>	237
§ 161. Power of State Courts Derived from State Statutes.....	237-239
§ 162. Early Federal View.....	239-241
§ 163. Decisions of State Courts.....	241-246
1. New York	241-243
2. Florida	243-244
3. Texas	244
4. Iowa	245
5. Connecticut	245
6. Alabama	245-246
§ 164. The Supreme Court on Power of Review.....	246
§ 165. Federal and State Courts Invested With Right.....	247
§ 166. All Doubt Removed.....	248-250

CHAPTER XX.

RENDITION: PLEADING AND PRACTICE.

§ 167. Relief from Illegal Arrest.....	252
§ 168. The U. S. Supreme Court Sustains this View.....	252
§ 169. Waiver of Rights. Relator and Respondent.....	253
§ 170. Petition for the Writ.....	253
§ 171. Respondent's Return to the Writ.....	254

	PAGE.
§ 172. Relator's Traverse	255
§ 173. At Hearing how Papers may be Produced.....	255
§ 174. Pleading and Issue.....	256
§ 175. The Hearing	256-257
§ 176. The Order of Discharge may be Vacated.....	257
§ 177. Form of Petition to United States Judge.....	258-259
§ 178. Form of Writ in United States Court.....	260
§ 179. Form of Petition for Writ to State Court or Judge....	261-262
§ 180. Form of State Writ of <i>Habeas Corpus</i>	263
§ 181. Form of Officer's Return to the Writ.....	264
§ 182. Form of Prisoner's Traverse.....	264-265
§ 183. Suggestions for Resisting Rendition.....	265-270
1. Identity	265
2. Arrest	265
3. Arrest Prior to Demand.....	266
4. Governor's Warrant of Rendition.....	266
5. Requisites of the Papers.....	266
6. Charge of Crime.....	266
7. Information and Belief.....	267
8. The Authentication	267
9. Jurisdictional Question	268
10. Physical Presence Necessary.....	268
11. "Complaint"	268
12. Information	269
13. Information instead of Indictment.....	269
14. Governor must Personally Sign Warrant.....	269
15. "Great Seal" of State.....	269
16. When Accused not a Fugitive.....	269
17. Mob Violence	270
18. Failure to Annex Charge of Crime.....	270
19. Accused and Charged with Crime a Distinction..	270
§ 184. Final Appeal to U. S. Supreme Court.....	270
§ 185. Appeal in State Courts.....	271-274
1. States Holding Writ Reviewable.....	271-273
2. States Holding Writ not Reviewable.....	273-274

CHAPTER XXI.

SUPREME COURT OF THE UNITED STATES AND RENDITION.

§ 186. Judicial Ruling Favorable to Demanding States.....	275-276
§ 187. A Remarkable State of Facts.....	276-277
§ 188. Rule as to Jurisdiction of the Supreme Court.....	277
§ 189. What has the Supreme Court Decided in Rendition Cases?	278
§ 190. <i>Kentucky v. Dennison</i>	278

	PAGE.
§ 191. Robb v. Connolly.....	279
§ 192. <i>Ex parte</i> Reggel.....	280
§ 193. Roberts v. Reilly.....	281-283
§ 194. Cook v. Hart.....	283-285
§ 195. Lascelles v. Georgia.....	285-286
§ 196. Pearce v. Texas.....	286-287
§ 197. Whitten v. Tomlinson.....	288-289
§ 198. Hyatt v. People ex rel. Corkran.....	289-291
§ 199. Munsey v. Clough.....	292
§ 200. Dennison v. Christian.....	293-295
§ 201. In re Strauss.....	295-297
§ 202. Pettibone v. Nichols.....	298-300
§ 203. Haywood v. Nichols.....	300
§ 204. Moyer v. Nichols.....	300
§ 205. Morey v. Whitney.....	300
§ 206. Appleyard v. Massachusetts.....	300-302
§ 207. McNichols v. Pease.....	302-304
§ 208. Bassing v. Cady.....	304-306
§ 209. Pierce v. Creecy.....	306-307
§ 210. Kopel v. Bingham.....	308-309
§ 211. Compton v. Alabama.....	309-310
§ 212. Marbles v. Creecy.....	311-312
§ 213. <i>Ex parte</i> Hoffstot.....	312-314
§ 214. Strassheim v. Daily.....	314-316
§ 215. Drew v. Thaw.....	316-319
§ 215a. Innes v. Tobin.....	320-322

CHAPTER XXII.

ARREST AND RETURN OF FEDERAL PRISONERS.

§ 216. Interstate Rendition and Federal Removal.....	323
§ 217. The Removal Statute.....	323-324
§ 218. Proceedings for Removal.....	324-325
§ 219. Power of the District Court.....	325
§ 220. Rights of the Accused.....	325-326
§ 221. Removal to and from the Philippine Islands.....	326-327
Addenda: Latest Cases.....	328-330
Appendix: State Statutes.....	331-493
Table of Cases.....	494
Index	509-534

The Law of Interstate Rendition

CHAPTER I

INTRODUCTION

- § 1. Rendition not "Extradition."
- § 2. Seven Fundamental Points of Difference.
 - 1. Source of Authority.
 - 2. Action how Effected.
 - 3. Charge of Crime.
 - 4. Extraditable Offenses.
 - 5. Crimes for Which Fugitive May Be Tried.
 - 6. Political Offenses.
 - 7. When Right to Surrender of Fugitive Is Absolute.
- § 3. Authorities Sustaining the Author's Position.
- § 4. Early Dispute on Rendition.
- § 5. President Washington Ends Controversy.
- § 6. Court Rulings Follow Disputes.
 - 1. "Treason, Felony or Other Crime," Defined.
 - 2. Duty of Executive of Asylum State.
 - 3. Asylum Executive no Discretion.
 - 4. The Word "Duty," in Act of 1793, Defined.
 - 5. No Power to Force Governor to Honor Requisition.
- § 7. Kentucky v. Dennison, *Supra*, its Authority Considered.
- § 8. The U. S. Supreme Court Ruling Controls.
- § 9. Power of States to Arrest and Surrender Fugitives.
- § 10. Slavery and Rendition.
- § 11. Unadjudicated Questions.

§ 1. Rendition not "Extradition."—Interstate rendition, frequently but inaccurately referred to as "inter-state extradition," is the right of one State to demand and the duty of another State to surrender fugitives from justice from the former State unto the latter,

where they stand charged by the constituted authorities thereof, with the commission of crime. To characterize the procedure under this definition as "interstate extradition," is plainly to misapply the real meaning of the word "extradition," as derived and understood from its long usage in connection with international law. It is fully realized by the author that such a radical change as the substitution of the word "rendition," for the commonly used word "extradition," may not be received with general favor; yet, accuracy and precision in the use of words demand the adoption of "rendition"—the meaning of which is clear and unmistakable. It is now almost universally conceded, in the light of the decisions of the Supreme Court of the United States, that the two methods of demanding, arresting and surrendering fugitives from justice, foreign and domestic, are widely different in every respect.

§2. Seven Fundamental Points of Difference.

1. Source of Authority.

1. Interstate rendition depends entirely upon par. 2, sec. 2, art. IV, of the Constitution of the United States and sections 5278 and 5279, of the Revised Statutes.

1. International extradition depends absolutely upon the terms of the treaty existing between such foreign government and the United States of America.

2. Action how Effected.

2. Interstate rendition is effected and controlled absolutely by the action of the State authorities without the consent of or reference to the government of the United States.

2. International extradition is effected by the government of the United States alone without the consent of or reference to the authorities of the State wherein the person to be extradited is found.

3. Charge of Crime.

3. In interstate rendition only a charge of crime is essential and where an indictment is found or an affidavit is made against the fugitive, no evidentiary facts by deposition, as to the commission of the crime, is required. (*Pierce v. Creecy*, (1908), 210 U. S. 387.)

3. For international extradition the demand must be accompanied with evidence not only that the alleged fugitive is charged with crime but there must be proof making out a *prima facie* case that the crime charged has been committed.

4. Extraditable Offenses.

4. In interstate rendition, if the acts charged constitute a crime in the demanding State, however frivolous, the fugitive must be surrendered, should all the lawful requirements be observed in his demand. *Kentucky v. Dennison*, (1860), 24 How. 66.

4. In international extradition between foreign governments and the United States fugitives are extraditable *only* for such crimes as are covered by the treaty.

5. Crimes for Which Fugitive May Be Tried.

5. In interstate rendition the fugitive surrendered may be tried in the demanding State for a crime or crimes other than the one for which he was surrendered. (*Lascelles v. Georgia*, (1893), 148 U. S. 543.)

5. In international extradition the fugitive surrendered to the demanding nation can *only* be tried for the crime for which he was extradited.

6. Political Offenses.

6. In interstate rendition a fugitive may be ar-

6. In international extradition all treaties be-

rested and surrendered to another State for a political offense—treason. (Par. 2, sec. 2, art. IV, Constitution.)

tween foreign governments and the United States positively exclude offenders charged with political crimes.

7. When Right to Surrender of Fugitive is Absolute.

7. In interstate rendition the motive or purpose of the authorities of the demanding State in asking the arrest and return of the fugitive is not a subject for inquiry or investigation in the asylum State. Do the requisition and the accompanying papers meet the conditions specified in the Constitution and laws of the United States? If so the right to have the fugitive surrendered is an absolute legal right.

7. In international extradition in a proper case inquiry will go beyond the face of the papers to ascertain if in reality the charge apparently one of ordinary crime is in fact a cloak to hide a prosecution for a political offense or one not included in the treaty.

The distinction being so marked it is now contended that greater exactness will be secured by the use of the word "rendition," as the more accurate and appropriate word to be employed, being less liable to be confused with "international extradition." The Hon. John Bassett Moore, an international lawyer and author of reputation, in his book on "International Extradition and Interstate Rendition," held to the same view. In Vol. 2, page 516, it is said:

"The use of the term 'extradition' to describe the rendition of fugitives from justice from one State to another is convenient and firmly established, but it is nevertheless inaccurate and misleading. On the theory that they were dealing with a matter of extradition in the international sense, public officers and law writers have been led to consult the prin-

ciples of international law and to apply them to a subject which they do not govern. The transfer of an accused person from one part of a country to another having a common supreme government does not bring into operation the principles of international law."

See also Voorhees on the Law of Arrest, Sec. 213, page 177.

§ 3. Authorities Sustaining the Author's Position.—The Supreme Court of the United States in *Lascelles v. Georgia*, (1893), 148 U. S. 543, 13 Sup. Ct. 687, 37 L. ed. 549, held that "rendition" and not "extradition," was the proper word to be used when referring to the arrest and surrender of interstate criminals. And in *People ex rel. Lawrence v. Brady*, (1875), 56 N. Y. 182; *Knox v. State*, (1904), 164 Ind. 230, 73 N. E. 255, 108 Am. St. 29; *Mark v. Browning*, (1911),—Utah—, 115 Pac. 275; *In re, Flack*, (1913), 88 Kan. 616, 129 Pac. 541, 32 Ann. Cas. 789, 47 L. R. A. (N. S.) 807, the word *rendition* is used and "extradition," is entirely discarded. Since such authorities sanction the use of the term "interstate rendition," instead of "interstate extradition," no hesitancy is felt in omitting the word "extradition" from the remaining pages of this work, except when used in a quotation.

§ 4. Early Dispute on Rendition.—The enforcement of the law of interstate rendition has been productive of many bitter and acrimonious controversies between the chief executives of many of the States of the Union. Indeed, from the very earliest colonial times, the arrest and return of fleeing criminals by the so-called asylum authorities has been attended with many obstacles and difficulties, so much so, that, near the middle of President Washington's first term of office, in 1790, the governor of Pennsylvania and the governor of Virginia became involved in a heated controversy. The refusal of the latter to arrest and surrender three alleged fugitives from justice, who had fled from the former

State, after the commission of a crime, and had found safe refuge and asylum in the State of Virginia. This controversy lasted for several months, many sharp and stinging official communications passed between the two governors and much bad feeling was engendered, but the Virginia executive stood firm and steadfastly refused to surrender the three alleged fugitives to the Pennsylvania authorities, stoutly maintaining that the crime charged was not an offense against the laws of Virginia and therefore did not fall within the purview of the constitutional provision on interstate rendition. This position of the governor of Virginia was based on an elaborate and learned opinion of the attorney-general of that State, who held to the doctrine that to kidnap a free Negro, bring him into Virginia and sell him into slavery was no crime under the laws of that State, but merely a "trespass or a breach of the peace."

§ 5. President Washington Ends Controversy.—In view of this remarkable position of the Virginia authorities, the governor of Pennsylvania made a direct appeal to President Washington, and submitted to him all the documents in the controversy, and the President in turn transmitted them to the Attorney-General of the United States for an opinion as to who was right—the governor of Virginia or the governor of Pennsylvania. (It is a noticeable historical fact that the Attorney-General of the United States at that time, and the governor of Virginia, were both Randolphs, and closely related.) The Attorney-General of the United States decided that the clause of the Constitution, relating to interstate rendition, was not self-executing and that there was no legal method by which its mandate could be enforced, except by an act of Congress. Thereupon the first President, in person, delivered to Congress a special message, embodying all the documents submitted to him by the two governors, as well as the opinion of the Attorney-General of the United States, with an earnest recommendation that Congress

at once take such action as would forever put an end to such disputes. The result was the passage of the act of Congress of 1793, in aid of the constitutional provision on interstate rendition, and President Washington approved the same on the 12th day of February of the same year and it became the law and is now known as sections 5278 and 5279 of the Revised Statutes of the United States. Many subsequent attempts have been made in Congress to amend and enlarge this enactment, but all such efforts have failed for the reason that the people apparently are satisfied with the operation of the law of 1793. In 1887 a so-called "interstate extradition conference," was held in New York City, composed of delegates, said to have had large experience in rendition procedure, appointed by the governors of the various States and Territories, for the purpose of formulating such amendments to sections 5278 and 5279 of the Revised Statutes of the United States, as might be thought proper. After several days of deliberation the conference presented an elaborate system of interstate rendition in the form of a bill to supersede the old law, which subsequently was introduced in the house of representatives at Washington. This branch of Congress paid but little attention to the proposed measure and the bill itself died in the committee to which it had been referred. This so-called "interstate extradition conference," has met annually since then and efforts have been made to restrict interstate rendition to certain crimes or to eliminate wife abandonment and other "trivial offenses" from rendition. No State or governor of a State has any authority under the Constitution of the United States, to enter into an agreement with another State or governor of a State for the purpose of restricting the enforcement of the law. All such agreements are absolutely void and of no force and effect. Congress so regarded the work of this "conference," hence, no attention was paid to its recommendations.

§ 6. Court Rulings Follow Disputes.—The present law, passed by Congress in 1793, which grew out of the controversy between the governors of Pennsylvania and Virginia, for a time at least, ended such disputes. Nevertheless, there were many wide differences of opinion as to the interpretation of this law, in aid of the Constitutional provision, relating to interstate rendition, and the courts were kept busy for many years thereafter, passing upon the various phases of rendition. The most noteworthy of the earlier cases on this subject, *Kentucky v. Dennison*, (1860), 24 How. 66. This was an application direct to the Supreme Court of the United States by the governor of Kentucky, for a writ of *mandamus*, directed to the governor of Ohio, commanding him to comply with the requisition of the governor of Kentucky, for the surrender of a fugitive from justice, charged with crime in the latter State. The writ was denied because of the lack of jurisdiction, the court holding that there was no power delegated to the General Government to compel the governor of a State to surrender a fugitive from justice. Mr. Chief Justice Taney, a lawyer and jurist of renown, speaking for the court, delivered an elaborate opinion, which being practically the first general pronouncement of that court on interstate rendition, is regarded by lawyers and courts as a controlling authority on the subject. With no seeming desire to dodge any of the questions raised, the court with great care and labor, reviewed at length every aspect or angle to interstate rendition, holding among other things:

1. "Treason, Felony or Other Crime," Defined.

That the words "treason, felony, or other crime," in the second clause of the second section of the fourth article of the Constitution of the United States, include every offense forbidden and made punishable by the laws of the State where the offense is committed.

2. Duty of Executive of Asylum State.

That it was the duty of the executive authority in each State or Territory, upon the demand made by another executive, accompanied by an indictment or affidavit, duly authenticated, to cause to be arrested and delivered to the agent of such executive the alleged fugitive.

3. Asylum Executive no Discretion.

That the duty of the governor of the asylum State was merely ministerial and that he had no right under the law to exercise any discretionary power as to the nature or character of the crime charged.

4. The Word "Duty," in Act of 1793, Defined.

That the word "duty," in the act of 1793, means the moral obligation of the State to perform the compact in the Constitution, when Congress had, by that act, regulated the mode in which the duty was to be performed.

5. No Power to Force Governor to Honor Requisition.

That neither Congress nor the Judiciary or any other department of the General Government, can coerce or compel the governor of a State or Territory to surrender an alleged fugitive. It is a moral obligation which he may perform or not as he may see proper.

§ 7. Kentucky v. Dennison, Supra, its Authority Considered.—Courts have been known to criticise and question the authority of this case, because the petition for *mandamus* was dismissed by the Supreme Court of the United States for *lack* of jurisdiction and hence, could not decide any of the other questions, for the reason that, they were not properly before the court for adjudication. In the case of *In re Voorhees*, (1867), 3 Vroom, 142, the supreme court of the State of New Jersey, in discussing this objection, said: "Although this case is subject to the criticism of counsel, that the court finally

determined that it had no jurisdiction, still, as the case was fully argued and evidently considered with much care, I cannot but regard the views expressed on this subject of constitutional exposition as possessed of little less than the force of absolute authority." And in *Brown's Case*, (1873), 112 Mass. 409, the supreme court of Massachusetts in speaking of this case, said: "Although that opinion was in one sense extra-judicial, because not necessary to the judgment which dismissed the petition for *mandamus*, it is proper to refer to it as supporting our reasoning and conclusions."

§ 8. The U. S. Supreme Court Ruling Controls.—Since interstate rendition, or the demand, arrest and surrender of an alleged fugitive from the justice of one State to another, is based entirely upon the Constitution and laws of the United States, so all disputed questions arising in the subordinate Federal courts on *habeas corpus*, as well as in the State supreme courts, on this subject, cannot be authoritatively determined until such cases, embodying these questions, are carried to the Supreme Court of the United States, by writ of error or appeal, for final adjudication. This court alone is the tribunal of last resort and when it speaks, within jurisdictional limits, its enunciation is the supreme law of the Union, and its adjudication of disputed questions must be received as such by the courts of the States, as well as the courts of the Federal government. Therefore, when an alleged fugitive, rich or poor, high or low, against whom a final judgment has been so pronounced by a Federal or State supreme court, and if such judgment is violative of a positive right or privilege claimed by him under the Constitution and laws of the United States, then, and in that event, he may have the same heard and reviewed by this highest court of the land, and the controverted questions growing out of his arrest and detention as an alleged fugitive finally and positively settled.

§ 9. Power of States to Arrest and Surrender Fugitives.—It has been the uniform opinion that the States

of the Union, on the formation of the Constitution, had the power and authority to arrest and surrender fugitives from justice, found in the asylum State and charged with the commission of "treason, felony, or other crime," in another State. It was never intended that this right of the States should be curtailed in any respect, and that, so far from taking it away, the Constitution itself provided for its exercise, *contrary to the will* of a State, in the case of a refusal to honor a demand; thereby settling, as amongst the States, the contested question whether on proper demand, the obligation to surrender was perfect and imperative, or whether it rested on comity and was discretionary. Mr. Chief Justice Green, of the supreme court of New Jersey, in *In re Fetter*, (1852), 3 Zab. 311, referring to this subject, said: "This clause of the Constitution of the United States does not contain a grant of power. It confers no right. It is the regulation of a previously existing right."

§ 10. Slavery and Rendition.—Controversies between officials of various States, growing out of attempted rendition of alleged fugitives from justice, similar to the Virginia and Pennsylvania dispute, have been frequent and often bitterly contested and the final result, in many instances, has been the entire suspension, for a time at least, of all rendition of fleeing criminals between certain States. The States of the North and the States of the South were generally the parties to such conflicts, and alleged crimes against slavery were always responsible for such disputes. Happily for the American people the great cause of the trouble between States of the two sections has been permanently removed. Negro slavery has been forever abolished in the United States to the satisfaction of all the people. Sectional lines do not now form a barrier against the arrest and surrender of fugitives from justice, and judicial opinions are no longer swayed by passion and prejudice fostered and encouraged by human slavery. The past fifty years or since the abolition of slavery, is remarkable in this, that, this period has witnessed the development of a judicial in-

terpretation, relating to interstate rendition of fugitives from justice, in strict conformity to the Constitution and laws of the United States.

§ 11. Unadjudicated Questions. — While many disputed questions of interstate rendition have been authoritatively settled by the Supreme Court of the United States, thereby removing the cause for friction and disputes between the States, still many other undetermined propositions are constantly arising to harass and annoy courts and officials in dealing with fugitives from justice. Among such unsettled questions may be mentioned the following:

1. The validity of State legislation concerning interstate rendition.

2. The identity of fugitive when raised, how to be finally determined.

3. The governor's finding that a party is a fugitive from justice, how far reviewable by the courts.

4. The power of a governor to recall or revoke warrant of rendition, before removal of fugitive.

5. The validity of the statutes of New York, Pennsylvania, Ohio, Indiana, Kentucky and Delaware relating to identification of alleged fugitives.

6. The legality of arrests made on authority of warrant issued by magistrates *before* "demand."

7. The legality of State legislation providing for the rendition of *witnesses*, alleged to have fled from a State.

8. The validity of an "information" as a substitute for an indictment as a charge of crime in rendition.

9. The "Territory," has it an identical meaning with that of State, in rendition procedure.

10. The legality of a State statute restricting interstate rendition to felonies.

11. The extent to which a court may inquire into the validity of an indictment as a charge of crime.

CHAPTER II.

THE CONSTITUTION AND RENDITION.

- § 12. The Constitutional Provision.
- § 13. Rendition Historically Considered.
- § 14. Distinction Between Rendition and Extradition.
- § 15. Fugitives under the Confederation and Constitution.
- § 16. An Additional Interpretation by the Highest Court.
 - 1. Judicial Supremacy.
 - 2. Congressional Authority.
- § 17. The General Government and the States.
- § 18. Supremacy of the Constitution.
- § 19. Offenses and Rendition.

“A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.”

§ 12. The Constitutional Provision.—This single sentence composed of fifty-one plain and simple words is the sole constitutional provision, relating to interstate rendition, and is regarded as a confirmation of a previous surrender of authority by the States, to the confederated government, the original grant being the Articles of Confederation, of all power pertaining to the arrest and surrender of a fugitive from justice charged with the commission of crime in one State and who has fled to another. This renunciation of the transfer of authority had been productive of many days of earnest and thoughtful consideration in America's first and only constitutional convention, which formed and promulgated that incomparable contract between separate and independent States and now esteemed as that matchless charter of American liberty—the Constitution of the United

States. While there may have been many divergent interests contending for the mastery, in that august body, yet it is generally conceded that self aggrandisement and personal ambition had but little to do with the formation of the Constitution. The general welfare of the entire country and the perpetuity of the governmental system thus inaugurated, commanded the best efforts of its undivided membership. No body of men ever assembled had been more intensely interested in a work and more thoroughly equipped for its accomplishment. Lawyers, judges, doctors, ministers, school-teachers, merchants and farmers mingled and labored together harmoniously for the common good and finally presented to the people of the various States, a fundamental law, as perfect and symmetrical, in all of its details, as was possible for man to form. The whole structure itself being based on a guarantee of "life, liberty and the pursuit of happiness," so far as the people were concerned, individually and collectively. This Constitution has stood the test for more than a hundred and twenty-five years, and but few successful efforts have been made, in that time, to modify any of its provisions. Such amendments as have been adopted during this period, have greatly strengthened and added to the original power of the general government, without apparently impairing the conceded sovereignty of the States, or abridging the vested rights of the people to "life, liberty and the pursuit of happiness." The flight of years brings added reverence and veneration from the living of to-day for its wise, just and humane provisions, which have done so much for the development of this system of government and the general advancement of the material interests of the country; and while many of its precepts have fallen into disuse, yet the spirit that animated the men who framed this fundamental law, and the men who afterwards so gallantly defended it, will always live, and the Constitution itself will ever remain to the present and future generations as a priceless heritage of wisdom, justice and equality.

§ 13. **Rendition Historically Considered.**—The much discussed subject of sovereignty resides wholly and entirely in and with the people and may be exercised only in such manner as they have provided by the Constitution, and this instrument itself was not ordained and established by the States in their sovereign capacities, but as the preamble declares, *by the people* of the United States, and its adoption by them carried with it an acquiescence of certain rights restricted therein. Among these rights was that granting the power to arrest and surrender fleeing criminals—the earliest exercise of this authority by the various plantations of New England, as these independent governments were then called, dates back to the first part of the seventeenth century, and the right to make such arrests and delivery of fugitives from justice came to them directly from the common law, based on the “common welfare and safety of society” doctrine, and resting entirely upon comity. Subsequently these plantations or separate governments, by solemn agreement, entered into and ratified by them in 1643, made the arrest and surrender of fleeing criminals absolutely obligatory upon each sovereignty, as the plantations were at that time, and thus early *comity* between these separate governments, gave place to a positive agreement or *quasi* treaty by which all persons accused of crime and who became fugitives from justice should be arrested and returned to the plantation from which they had fled. In 1670 this agreement was somewhat modified, but the essential features of arrest and surrender upon judicial demand of fugitives from justice was continued for over one hundred years. The next agreement, relating to fugitives, was made in 1778, when the articles of Confederation were adopted by the American colonies, as the plantations were then styled, and ever afterwards each Colony was designated as a State, and the general government as the United States of America. This peculiar system of a unified government of separate and independent States—a Confederation controlled by a Congress of delegates from each State—

continued in existence a little over ten years; and although *intended* to be a "perpetual union," of the then thirteen States and *Canada*, should she accede to the Confederation, (which she did not,) the apparent weakness of the government itself, and a lack of unity and good feeling between the States, was the primary cause for the abandonment of the Confederation, and in its place the *real* government of the United States of America was inaugurated when the Constitution was adopted in 1789.

§ 14. Fugitives under the Confederation and Constitution.—The fourth article of the Confederation compact was as follows:

"If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice and be found in any of the United States, he shall, upon the demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense."

The substantial difference between the clause of the Constitution and the clause of the Articles of Confederation, which the former superseded, is the omission of the words, "guilty of" and "high misdemeanor," and, the substitution in their place of the more easily understood words, "other crime." This proved to be a wise change, greatly relieving the judiciary of innumerable legal tangles, growing out of the arrest and deportation of fugitives from justice.

In the past, the construction of this clause by the courts of the colonies, had been a continual source of judicial annoyance, resulting in the escape of many fugitives; but when this change was made all doubt was removed as to the interpretation to be given to the meaning of "treason, felony, or other crime." However, it was soon apparent that, though plain and simple as this paragraph of the Constitution might be, it was not self-executing. No statement was made therein as to the manner in which the charge of crime shall be made, or

as to what evidence is necessary to establish the fact that the person is a fugitive from justice, or as to the actual authority upon which the demand is made and which must be exercised in ordering the arrest and making the delivery of the alleged fugitive. These vital points in rendition between the States remained unsettled, as far as the Constitution was concerned, until the passage of the act of Congress of 1793, which gave force and effect to this constitutional provision and made interstate rendition not merely a dream, but an actual fact, capable of legal and positive execution.

§ 15. Distinction Between Rendition and Extradition.

—The obligation of arrest and rendition thus imposed upon the States and Territories of the United States is not, like treaties between independent nations, limited to certain criminal offenses, specifically set forth in such treaties, but includes all crimes committed by the fugitives in the State or Territory from which he fled, and by no means is the duty, imposed upon the executive authority of the surrendering State, merely a matter of discretion, but whenever the demand is, in all respects, in strict compliance with the requirements of the Federal law, then the alleged fugitive from justice must “be delivered up to be removed to the State having jurisdiction of the crime.” The clause of the Constitution, quoted at the beginning of this chapter, is absolutely mandatory in this regard, so far as the governor of the asylum State is concerned, and the history of interstate rendition leaves no room for doubt but that this was the purpose and intention of the framers of our fundamental law. Upon this subject in one of the earlier cases, *Holmes v. Johnson*, (1840), 14 Pet. 540, Mr. Justice Catron, of the Supreme Court of the United States, said:

“The uniform opinion heretofore has been that the States, on the formation of the Constitution, had the power to arrest and surrender in such cases, (referring to interstate rendition) and that, so far from taking it away, the Constitution had provided for its exercise *contrary* to the will of a State in

case of an unjust refusal thereby settling, as amongst the States, the contested question whether on demand, the obligation to surrender was perfect and imperative, or whether it rested on comity and was discretionary."

§ 16. An Additional Interpretation by the Highest Court.—And in a still later case, *Kentucky v. Dennison*, (1860), 24 How. 104, the Supreme Court of the United States, through Mr. Chief Justice Taney, in again construing this clause of the Constitution relating to the demand, arrest and surrender of an alleged fugitive from justice, said:

1. Judicial Supremacy.

"The Constitution having established the right on one part and the obligation on the other, it became necessary, to provide by law the mode of carrying it into execution. The governor of the State could not, upon a charge made before him, demand the fugitive; for according to the principles upon which all of our institutions are founded, the Executive Department can act only in subordination to the Judicial Department, where rights of persons and property are concerned, and its duty in those cases consists only in aiding to support the judicial process in enforcing its authority, when its interposition, for that purpose becomes necessary, and is called for by the Judicial Department. The Executive authority of the State, therefore, was not authorized by this article to make the demand unless the party was charged in the regular course of judicial proceedings. And it was equally necessary that the Executive authority of the State upon which the demand was made, when called on to render his aid, should be satisfied by competent proof that the party was so charged. This proceeding, when duly authenticated is his authority for arresting the offender.

2. Congressional Authority.

"The duty of providing by law the regulations necessary to carry this compact into execution, from

the nature of the duty and the object in view, was manifestly devolved upon Congress; for if it was left to the States, each State might require different proof to authenticate the judicial proceeding upon which the demand was founded; and as the duty of the governor of the State where the fugitive was found is, in such cases, merely ministerial, without right to exercise either executive or judicial discretion, he could not lawfully issue a warrant to arrest an individual without a law of the State or Congress to authorize it. These difficulties presented themselves as early as 1791, in a demand made by the governor of Pennsylvania, upon the governor of Virginia, and both of them admitted the propriety of bringing the subject before the President, who immediately submitted the matter to the consideration of Congress, and this led to the act of 1793, of which we are now speaking. All difficulty as to the mode of authenticating the judicial proceeding was removed by the article of the Constitution, which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which acts, records and proceedings shall be proved, and the effect thereof.' And without doubt the provision of which we are now speaking, that is for the delivery of a fugitive, which requires official communication between States, and the authentication of official documents, was in the minds of the framers of the Constitution, and had its influence in inducing them to give this power to Congress."

This interpretation of the clause of the Constitution and the act of Congress of 1793, pertaining to interstate rendition, coming from the court of last resort, has had a tendency to remove all doubt as to the exact purpose and intent of the law. Uncertainty and difference of opinion largely characterized the judicial utterances of the courts, prior to the time when this decision was rendered; but, since that time, the questions then passed upon by the Supreme Court of the United States, have

been recognized as finally and authoritatively settled—the controlling law of the land.

§ 17. The General Government and the States.—The Constitution of the United States is in itself a specific enumeration of powers expressly surrendered by the people to the Federal government, and where such power has been given, as is evidenced by the language of the grant, no other authority can assume the right to exercise the same. Clearly this would prevent the several States from, in any manner, interfering with interstate rendition by legislation or otherwise; but, the long silence of the general government in asserting and maintaining its right to exclusive control over matters relating to the arrest and surrender of fugitives from justice, fleeing from one State to another, and the acquiescence in the passage of auxiliary laws by the States on the subject, has operated as an admission by the general government that the subject of interstate rendition is a concurrent field of legislation. And without yielding any of the substantial delegated rights as mentioned in par. 2, sec. 2, article IV, of the Constitution, and without, in any way, impairing the efficiency of the methods of arrest and surrender of fugitive criminals, the Federal government has apparently abandoned all further efforts at legislation on this subject, being satisfied with the execution of the law as it now stands. It is generally admitted that the auxiliary laws passed by the several States of the Union are a great aid in interstate rendition procedure.

§ 18. The Supremacy of the Constitution of the United States.—At the time of the adoption of the Constitution it was the wish and will of the American people, openly expressed, that the Constitution itself should be the paramount and all-controlling law of every State of the Union; hence, by its own mandate (Article VI, sec. 2,) it is declared to be “the supreme law of the land;” and, therefore, binding upon all officers and departments of both Federal and State governments, including every court, whether it derives its authority from a State or

from the United States. Thus the supremacy of the Federal Constitution is unquestioned and absolute. The whole people of the United States must bow to its mandates and yield willing obedience to its commands, their senators and representatives in Congress, as well as their representatives in the various State legislatures, must see to it that no law is passed by Congress or a State legislature, which runs counter or contravenes the express or implied provisions of that instrument—all such acts or laws are void and of no effect whatever. In this connection it is proper to say that the adoption of the present Constitution entirely *changed* the form of the government then in existence, without altering in any way the name under which it operated under the Articles of Confederation—the “United States of America.” The essential difference between the two forms of government, was that the government under the Confederation was a government of the States; while the government of the Constitution is a government “of the people, for the people and by the people.”

§ 19. Offenses and Rendition.—The authorities are practically unanimous and unquestioned in holding, in view of the facts brought out in the discussion of this provision in the constitutional convention, that it applies to all persons charged with the commission of any crime whatever in the State or Territory from which he may have fled. No State, by its governor or legislature, can place any limitation on the character of the crime charged against a fugitive from the justice of another State or Territory. If the offense charged in the demanding State, however *frivolous*, is a crime according to the statutes of that State, that establishes its legality beyond question in the asylum State, and is a sufficient justification for the arrest and surrender of the accused person under rendition procedure. See *Kentucky v. Dennison*, (1860), 24 How. 66; *Brown Case*, (1873), 112 Mass. 409; *In re Leary*, (1879), 10 Ben. 197; *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. ed.

250; *Lascelles v. Georgia*, (1895), 148 U. S. 537, 13 Sup. Ct. 687, 37 L. ed. 283; *State v. Hudson*, (1893), 20 Ohio N. P. 1, affirmed by the supreme court of Ohio in *Hudson v. State*, (1893), 52 Ohio St. 673; *Drinkall v. Spiegel*, (1896), 68 Conn. 441; *People ex rel. Marshall v. Moore*, (1915), 153 N. Y. Supp. 10.

CHAPTER III.

CONGRESSIONAL LEGISLATION.

- § 20. The Origin and Purpose.
- § 21. The Act of Congress of February 12, 1793.
- § 22. The Law as in U. S. Revised Statutes.
- § 23. Randolph's Ideas Adopted by Congress.
- § 24. No Debate in Congress when Bill Passed.
- § 25. Randolph's Interpretation of the Constitution on Interstate Rendition.
 - 1. "A Person Charged."
 - 2. "Or Other Crime."
 - 3. "Who Shall Flee from Justice."
 - 4. "Found in Another State."
 - 5. "The State Having Jurisdiction."
- § 26. The Act of Congress of 1793 Constitutional.

§ 20. **The Origin and Purpose.**—Shortly after the adoption of the Constitution of the United States it became evident that a wide difference of opinion existed as to the meaning of the clause relating to fugitives from justice, charged with the commission of "treason, felony or other crime" in one State and fleeing to another State. Many conflicts and controversies arose between the executives of different States, whenever the arrest and surrender of fugitives from justice were demanded. With the governor of one State making an official demand on the executive authority of a sister State, for the arrest and rendition of an alleged fugitive, and the latter refusing to comply with the demand, giving as his reason that the Constitution imposed no obligation upon him to make such arrest and delivery, and the clause in question being absolutely *silent* in this regard and no provision being made as to the *manner* in which the charge of crime should be made. Under these conditions what else could be expected but conflicts and differences? Only the prompt and determined action

of President Washington, in submitting the Pennsylvania and Virginia controversy to Congress and his earnest appeal, *in person*, to that body to enact a law covering the points in dispute, and the readiness of Congress in complying with his request, settled for all time to come this and similar disputes as to the proper construction to be given to this clause of the Constitution.

§ 21. The Act of Congress of February 12, 1793.—The act as passed by Congress and approved by President Washington is as follows:

Section 1. That whenever the executive authority of any State in the Union, or of either of the Territories North-west or South of the River Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or Territory to which such person shall have fled and shall moreover produce a copy of an indictment found, or an affidavit made before a magistrate of any State or Territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged fled, it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured and notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. But if no such agent shall appear within six months from the time of the arrest the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory.

Section 2. That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the

State or Territory from which he or she shall have fled. And if any person or persons shall by force set at liberty or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

The remaining sections of the act, relating to arrest and return of fugitive slaves, have been repealed by Congress, and since the adoption of the Thirteenth Amendment to the Constitution of the United States, could not possibly have any effect anywhere in the Union, hence they are omitted from these pages. However, it may not be out of place to mention the fact that the act of Congress of 1850, known as the fugitive slave law, just referred to, was declared to be constitutional by the Supreme Court of the United States in the case of *Ableman v. Booth*, (1858), 21 How. 506.

§ 22. The Law as in U. S. Revised Statutes.—The first and second sections of the act of Congress of February 12, 1793, are, with slight modifications, reproduced in the Revised Statutes of the United States, and are as follows:

Section 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such

agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

Section 5279. Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars, or imprisoned not more than one year.

§ 23. Randolph's Ideas Adopted by Congress.—An examination of the act of Congress, just set forth, shows what was deemed necessary to supplement the provision of the Constitution and to secure the performance of the duty enjoined therein, without friction and disputes between the States. Attorney-General Randolph's opinion may be regarded as a suggestion to Congress to clear up, by legislation, certain points in interstate rendition, somewhat obscured by par. 2, sec. 2, art. IV, of the Constitution. And a careful reading of the constitutional provision, the act of Congress and the extracts from his opinion following, will at once demonstrate that the first Attorney-General was pre-eminently correct in his interpretation of the fundamental law on this subject, and the act itself bears witness to the fact that Congress adopted his views in framing the statute of 1793 in aid of the clause of the Constitution relating to fugitives from justice.

§ 24. No Debate in Congress when Bill Passed.—Connected in the same bill with the provision for the arrest and surrender of fugitives from justice, was that for the surrender of fugitive slaves, destined to be, from an historical standpoint, of tremendous importance to the whole country. Nevertheless, there was no discussion, in the House of Representatives, on the advisability of the

passage of the bill, its provisions were accepted as a matter of course, because President Washington urged its adoption. Whether it was debated in the Senate there are no means of knowing, as the deliberations of that body were not opened to the general public until the year 1794. While Congress may have maintained a remarkable silence on this provision for the rendition of fugitives from justice, yet the preliminary discussions out of Congress, prior to the passage of the act of 1793, were full and satisfactory, so much so that, the intent and scope of the enactment could be fully determined. The act of 1793 was almost contemporaneous with the Constitution itself, and, like all the early legislation for the construction and enforcement of the provisions of that instrument, it was passed while Congress still contained many former members of the constitutional convention.

§ 25. Randolph's Interpretation of the Constitution on Rendition.—Edmund Randolph, the Attorney-General of the United States, at the special request of President Washington, during the Pennsylvania and Virginia controversy, prepared an elaborate opinion upon the questions presented and suggested by the authorities of the two respective States. Mr. Randolph, himself a distinguished member of the convention that formed or framed the Constitution, was in every way capable of giving the true meaning, from a contemporaneous viewpoint, to this much discussed clause of the organic law on fugitives from justice. He considered successively the interpretation of the following phrases occurring in clause 2, section 2, article IV, of the Constitution: (1) "A person charged;" (2) "or other crime;" (3) "who shall flee from justice;" (4) "found in another State;" and (5) "the State having jurisdiction."

1. "A Person Charged."

Taking up the first proposition Mr. Randolph said, "this term is sufficiently technical to exclude any wanton

or unauthorized accusation from becoming the basis of the demand. It would, in the language of mere legal entries, be applicable where a bill had been found by a grand jury. It must be interpreted under the Constitution, as at least requiring some sanction to be given to the suspicion of guilt by a previous investigation. * * * Should such a procedure as this be declared to be incompetent as a charge, the object of this article in the Constitution must be either defeated or be truly oppressive."

2. "Or other Crime."

The second proposition, "or other crime," he contended "being associated with treason and felony, ought not to be confined to crimes having some quality common to them and treason and felony. Such a common quality does not exist, unless it be that of felony itself. Why, then, are the words *or other crime* added, if felonies alone were contemplated? In the penal code of almost every State, the catalogue of felonies is undergoing a daily diminition. But it is not by the class of punishment that the malignity of an offense is always to be determined. Crimes, going deep into the public peace, may bear a milder name and consequence; and yet it would be singular to shelter those who were guilty of them, because they were not called and punished as felonies."

3. "Who Shall Flee from Justice."

In giving his views on the third proposition, "who shall flee from justice," he said, "Some species of proof is indispensable; otherwise, the most innocent citizen may be carried in chains from his own to another State. It cannot be denied that every assertion of a governor ought to produce assent. But, upon a judicial subject, testimony, according to the judicial course, is alone adequate; and the demand is the only thing which is referred to an executive absolutely. The governor of Virginia is responsible for the just use of his discretion; and if he should yield to informal evidence, he must yield at his peril."

4. "Found in Another State."

On the fourth proposition, "found in another State," he held that, "at first it may seem unimportant whether he is so found or not; because if he be not there, he can sustain no injury from an arrest. I will not decide how far his character may suffer, if he be proclaimed throughout a State as a fugitive, when he may never have entered it; nor yet what other inconveniences he may undergo. But if the probability of these be striking, he ought not to be hunted by public authority at random. * * * Hence, it is made a pre-requisite to a demand, that the culprit shall be *found* in the State; that is, that some satisfaction be given that the government will not be put upon a frivolous search."

5. "The State Having Jurisdiction."

And in discussing the fifth and last proposition, "the State having jurisdiction," the Attorney-General said, "It is notorious, that the crime is cognizable in Pennsylvania only; for crimes are peculiarly of a local nature. * * * But if it were conceived, that Virginia might chastise offenses against Pennsylvania, or, that an action might be maintained in Virginia for what is a crime in Pennsylvania, it would not follow that the latter could not demand a malefactor from the former; for the clause in the Constitution was obviously dictated by a wish to prevent that distrust which one State would certainly harbor against another, in situations so capable of abuse. Besides, it corresponds with the words of the Constitution, if the State demanding has a *jurisdiction*, although it might not be an exclusive one. And these observations would have equal weight if the Federal courts in Virginia could animadvert on crimes arising within the limits of Pennsylvania. But the Constitution directs that trials *shall be held in the State where crimes shall have been committed*. I differ further in not discovering the disability of Virginia to deliver up the offenders. It has been sometimes fancied that, by delivering up, is meant

only that the State from which the demand is made should express an approbation that they may be apprehended within its territories. But as a State cannot be said to deliver up without being active, and it might disturb the tranquillity of one State if the officers of another were at liberty to seize a criminal within its limits, the natural and safe interpretation is, that the delivery must come from Virginia.”

This extensive quotation is made from Mr. Randolph’s official opinion because it is absolutely worthy of reproduction in these pages and the further reason is given that, the document itself should be carefully studied because it doubtless served as a hint to Congress in formulating and passing the act of 1793, relating to interstate rendition.

§ 26. The Act of Congress of 1793 Constitutional.—The Supreme Court of the United States, seventy-three years ago, in *Prigg v. Commonwealth of Pennsylvania*, (1842), 16 Pet. 539, unhesitatingly upheld the constitutionality of the act of Congress of 1793, so far as it related to the arrest and surrender of fugitives from justice. So pronounced was the court in its determination of this question that Mr. Justice Story, in delivering the opinion of the court, said:

“From that time (1793) down to the present hour not a doubt has been breathed upon the constitutionality of this part of the act, and every executive in the Union has constantly acted upon and admitted its validity.”

CHAPTER IV.

FUGITIVES AND THE DISTRICT OF COLUMBIA.

- § 27. Special Law by Congress.
- § 28. Return of Fugitive to the District of Columbia.
- § 29. The General Removal Law.
- § 30. This Method Though Sustained by the Supreme Court, is Yet Open to Criticism.
- § 31. Is the District of Columbia a "District" Within the Meaning of Section 1014?
- § 32. Had Congress Muddled the Whole Matter?
- § 33. Even the Senate Judiciary Committee Denied its Validity.
- § 34. Section 1014 as Expounded by a United States Judge.

§ 27. Special Law by Congress.—The city of Washington—the capital of the United States—territorially included in and known as the District of Columbia, being neither a State nor a Territory, was not included within the pale of the law of interstate rendition and for a time no provision was made for the arrest and surrender or for the demand and return of fleeing criminals. This condition, however, did not exist for any length of time. Congress, the supreme law-making power of the District of Columbia, early took this matter in hand in the interests of public justice that criminals, fleeing to or from the District, should not thereby secure immunity from punishment. On March 3, 1801, Congress legislated on this subject, (2 United States Statutes at Large, 115.) This act of Congress of 1801, is now reproduced as sections 930 and 931, chapter XX, Code of Law of the District of Columbia, (1911) and is as follows:

“Section 930. In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief justice of the supreme court of the District of Columbia shall cause to be apprehended and delivered up such fugitives from justice who shall be found within the District, in the same manner and under the same regulations as

the executive authorities of the several States are required to do by the provisions of sections fifty-two hundred and seventy-eight, (5278) and fifty-two hundred and seventy-nine, (5279), title sixty-six, (66), of the Revised Statutes of the United States, 'Extradition,' and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery.

Section 931. Any associate justice of said court shall have like power, in case of illness, absence or other disability of the chief justice, or when any such application shall be certified to him by the chief justice."

And although this law requires the arrest and surrender of fugitives from justice of any State or Territory, found in the District of Columbia, upon the requisition of the executive authority of the State or Territory where such crime has been committed, similar in every respect to rendition from one State or Territory to another, yet in the same statute no provision is made for the arrest and return of the fugitive fleeing *from* the District of Columbia. The chief justice of the supreme court of the District of Columbia performing like duties as are exercised by the governors of the various States and Territories.

§ 28. Return of Fugitives to the District of Columbia.
—But when it comes to the arrest and return of a fugitive, who may be charged with violating the *local laws* of the District of Columbia, or the general laws of the national government, and flees from the District and is afterwards found in any State or Territory of the United States, then it is that the Constitution and laws relating to interstate rendition *cease* to become operative, and section 1014, of the Revised Statutes, providing for the *removal* of offenders against the laws of the United States to the district where the crime is committed, is *relied* upon as the *authority* for the return of such criminals to the District of Columbia for trial. The District being under the control of the Federal government and

the violation of all laws being against the laws of the United States, the offender when arrested in any State or Territory is brought before a Federal court and an order of removal secured—thus his deportation to the District of Columbia is the result. And while interstate rendition may have had nothing to do with the return of the fleeing criminal to the District, the same result is accomplished and with less effort, though by a different law.

§ 29. The General Removal Law.—Section 1014 of the Revised Statutes of the United States, previously known as section 33 of the judiciary act of 1789, is as follows:

“For any crime or offense against the United States, the offender may by any Justice, or Judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has recognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk’s office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute a warrant for his removal to the district where the trial is to be had.”

§ 30. This Method Though Sustained by the Supreme Court, is Yet Open to Criticism.—This method of returning fugitive criminals, charged with violating the local laws of the District of Columbia, by authority of section 1014, though long in use, apparently sanctioned by con-

gressional enactments, (act of Congress, 1871—16 St., 426; act of Congress, 1874—1 Supp. Rev. St. 38; and act of Congress, 1902—Code of District of Columbia, sections 1 and 61;) and approved by judicial decisions, (*In re Buell*, (1875), 3 Dill. 116; *In re Benson*, (1904), 130 Fed. 486; *United States v. Campbell*, (1910), 179 Fed. 762,) and finally upheld and sustained by the Supreme Court of the United States, (*Benson v. Henkel*, (1904), 198 U. S. 1,) nevertheless, the method has not been free from criticism and attack. Its validity has been strongly assailed by a Federal court, (*United States v. Dana*, (1895), 68 Fed. 886,) and the judiciary committee of the United States senate, (see Report No. 658—February 16, 1875,) positively declared in an official report to that body that there was no authority for such return of fugitive criminals to the District of Columbia. But the Supreme Court of the United States having finally in *Benson v. Henkel*, *supra*, held that the District of Columbia was a Federal *district*, within the meaning of section 1014, and that a fugitive arrested and returned to the District of Columbia under its provisions could not complain of unlawful removal. This decision should end the matter but upon reflection it has been thought proper to give the points herewith, very briefly, made against the validity of section 1014, so far as attempts have been made to make it apply to the District of Columbia.

§ 31. Is the District of Columbia a "District" Within the Meaning of 1014?—If the District of Columbia has been made a Federal "district" within the meaning of section 1014 and now authorizes the arrest and return of fugitives to the District of Columbia, by the various acts of Congress, it must be admitted that Congress made several *unsuccessful attempts* before it accomplished its purpose.

Section 33 of the judiciary act, now section 1014 of the Revised Statutes of the United States, was passed by Congress two years before the State of Maryland ceded

the territory now known as the District of Columbia to the United States, hence that law was enacted without any reference whatever to the District of Columbia, and specifically related *only* to "districts," created by the act itself. No effort had been made by Congress to bring the District of Columbia within the purview of section 33 of the judiciary act, now section 1014 of the U. S. Revised Statutes, until *possibly* 1871—from that time and including 1874, Congress had divested itself of the right to enact local laws for the government of the District of Columbia, and during this period the District of Columbia was a Territory, with the same form of territorial government as other Territories of the United States. Then it was that Congress passed an act in 1871, (16 Stat. 426,) now section 93 of the Code of the District of Columbia, which is as follows:

"Section 93. The Constitution and laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District of Columbia as elsewhere within the United States."

§ 32. Had Congress Muddled the Whole Matter?—Evidently section 33 of the judiciary act, now as then section 1014 of the Revised Statutes, for returning fleeing criminals to the "district," where the crime is charged to have been committed, was regarded as "locally inapplicable" by Congress to the District of Columbia; and in an attempt to remedy the *inapplicability*, Congress again undertook to bring the District of Columbia under the protecting care of section 33 of the judiciary act or section 1014 of the Revised Statutes. This act of Congress was passed on June 22, 1874, (1 Supp. Rev. Stat. 38), the second section of which act declares that "the provisions of the thirty-third section of the judiciary act shall apply to courts created by act of Congress in the District of Columbia." This *serious* attempt by Congress to provide for the arrest and return of a fleeing criminal, who had violated the laws of the Dis-

trict of Columbia, fled from its justice and afterwards found in another part of the United States, was regarded as an atonement for long congressional neglect. Seventy years had passed without there being upon the statute books any adequate law in this regard.

But even the act of 1874 is apparently open to criticism of a very grave nature, in the case of the *United States v. Dana*, (1895), *supra*, the learned Federal judge in referring to this act of Congress declared that the statute was so vague and indefinite that it was difficult to determine its intention or effect. And further on in his opinion the distinguished jurist said that the act "was more noticeable for what it omits than for what it contains. It does not make the District of Columbia a Federal district, nor declare that offenders may be removed thither in like manner as other Federal districts, nor removed thither for violations of the local law; nor does it purport to enlarge the class of offenses contemplated by section 33 of the judiciary act. It does not even make the provisions of section 33 applicable in general to the District of Columbia but only to *courts created by Congress in the District of Columbia.*"

§ 33. Even the Senate Judiciary Committee Denied its Validity.—In the early part of the year 1875, the District of Columbia was very much agitated because Charles A. Dana, editor of the *New York Sun*, one of the leading newspapers of that city, had been arrested in New York charged with libel alleged to have been committed in the District of Columbia, and was enlarged by a Federal judge in New York because Dana would not be tried by a jury if returned to Washington. (See *In re Dana*, (1875), 7 Ben. 1.) The senate of the United States, a co-ordinate branch of Congress, the law-making power of the Union, became interested in the general discussion of the Dana case and submitted the matter to its judiciary committee for examination and report. This committee consisted of George F. Edmunds, Roscoe Conkling, F. T. Frelinghuysen, Allen G. Thurman and others—all noted for statesmanship and ability as con-

stitutional lawyers. The report of this committee (No. 658), is a very remarkable document and as a contemporaneous estimate of the legality of the act of 1874 falls but a grade below a judicial decision. The concluding portions of the report are as follows:

“The sum of the matter, therefore, is, that the second section of the act of June 22, 1874, confers upon the courts of the District of Columbia the power to arrest offenders found in the District, who are charged with crime committed in the District, and hold them for trial, (which was the law before,) and to arrest offenders found in the District, who have committed crimes against the United States in some judicial district of the United States, and to send them to such district for trial. And that is all. No person can be brought into the District of Columbia under it, either for libel or any other crime. The committee are of opinion that both the sections of the act are necessary and proper, and in perfect accordance with the principles of justice and the course of civilized jurisprudence. Without provisions of this character the District of Columbia would be an asylum for offenders committing crimes against the laws of the United States and escaping hither.

“It also remains to report, as directed by the resolution of the senate, ‘whether said act has any application to prosecution or indictment for the crime of libel.’

“We are of opinion that, as before stated, no person charged with the crime of libel can be brought into the District of Columbia under it, for no person can be brought here under it, for any crime whatever. * * *

§ 34. Section 1014 as Expounded by a United States Judge.—In the case of *In re Dana, et al.*, (1895), *supra* Mr. Dana, editor of the New York Sun, was indicted in Washington for an alleged libel published first in New York and afterwards circulated in Washington. On an affidavit, stating the indictment and annexing a copy, he was arrested in New York under a warrant issued by a United States commissioner, and held for trial in

Washington upon proof of identity. Subsequently an application was made to the Honorable Addison Brown, United States district court judge for the southern district of New York, for an order of removal of Dana from New York to Washington, which was elaborately argued before the district judge. In interpreting section 1014 of the Revised Statutes of the United States, quoted above, Judge Brown said:

“The whole structure of this section, its provisions in regard to bail, recognizances, witnesses, and commitment, and the express provision that the proceeding shall be ‘agreeably to the usual mode of process against offenders in such State,’ show that the familiar common-law proceeding upon complaint for the arrest and commitment of offenders by committing magistrates was intended to be adopted and followed, subject to the provision adopting the procedure of the several States. Even the magistrates named are almost identical with those named in the State Statutes.

“The proceeding contemplated by section 1014 is, moreover, an original and independent proceeding. It makes no reference to any indictment found elsewhere; nor is there any different provision for such cases. In those cases, by the common-law practice, and by State practice, the defendant, if within the State or Kingdom, was arrested upon a bench warrant, or a warrant signed by a justice of the peace, issued directly upon the finding of the grand jury. The bench warrant ran throughout the State or Kingdom; a justice’s warrant had to be ‘backed,’ or indorsed, by a justice in the county where the defendant was found. 1 Chit. Cr. Law, 342; Code Cr. Pro. N. Y. sec. 304, as Congress has not authorized that mode of proceeding upon Federal indictments, if the defendant is not within the district where the indictment is found, resort must be had, as it is now considered, to an original proceeding by complaint under section 1014; and whenever that section is appealed to, the procedure required by it must be observed, whether there has been a previous indictment found elsewhere, or not. The requirement that

the proceeding shall be 'agreeably to the usual mode of process against offenders in such State.' 'was designed,' says Mr. Justice Curtis, in *United States v. Rundlett*, (1854), 2 Curt. 41, Fed. Cas. No. 16,208, 'to assimilate all the proceedings for holding accused persons * * * to the proceedings had for similar purposes by the laws of the State where the proceedings should take place.' The words 'mode of process,' he says, are synonymous with 'mode of proceeding.'

"This must embrace the preliminary examination usual in the State, including the taking of evidence, depositions, and the examination of witnesses, and the duty of the magistrate in finding probable cause; because, aside from this clause, there is no rule on those subjects; and it cannot have been intended that the proceedings should be conducted arbitrarily, and without any rule at all. The provision also for the commitment of witnesses, contemplates their presence and examination. In making this provision for an observance of the practice in use in the State where the arrest is made, it may be reasonably presumed that the intention of the judiciary act was to prevent the hateful appearance of employing summary and arbitrary methods of removal, and to avoid creating prejudice against the new government which would be likely to be engendered through courses of procedure to which the people of the several States were not accustomed, and against which they had just successfully fought. The construction of treaty stipulations is analogous. *In re Farez*, (1870), 7 Blenchf. 345, 357, Fed. Cas. No. 4,645.

"Although the State rules of evidence are not applicable in criminal proceedings in Federal cases, unless Congress has so provided, the above clause of section 1014 sufficiently shows the intent of Congress in this instance. It also imports that the rules of procedure to be followed in proceedings under section 1014 are those in force in the State at the time and place of the removal proceeding. This construction has been adjudged either directly, or by necessary implication in many cases: by Woodruff, J., in *U. S. v. Case*, (1871), 8 Blenchf. 251, Fed.

Cas. Mo. 14,742; by Judge Dillon, in *U. S. v. Horton*, (1873), 2 Dill. 94, Fed. Cas. 15,393; by Judge Hammond, in *U. S. v. Browner*, (1881), 7 Fed. 86, 90; by Judge Deady, in *U. S. v. Martin*, (1883), 17 Fed. 150, 156; and by Dyer, J., in *Re Burkhardt*, (1887), 33 Fed. 25, 26. It is implied also in Mr. Justice Miller's language in the Case of *Bailey*, (1869), 1 Woolw. 422, 426, Fed. Cas. No. 730, holding that although no examination is provided for in express terms by section 1014, it is necessarily implied in the reference to the State practice. 'It would be a waste of time,' he says, 'to attempt to show that an imprisonment or order for bail is never made in any State, without a previous examination into the probable guilt of the prisoner, unless he voluntarily waives such examination.' Hammond, J., says, 'That the preliminary examination is to be in accordance with the usages of the district, seems to be a plain requirement of the statute.' Deady, J., referring to the clause in question, says, 'The validity, etc., is to be determined by the law of Oregon for the arrest, examination, and commitment of offenders;' and Dyer, J., says that the act 'requires a preliminary examination, so that the committing magistrate, and the judge signing the order of removal, may be satisfied of the probable guilt of the accused.' I do not find any reported case dissenting from these views. The State practice, therefore, as regards examinations before committing magistrates, must be followed, so far as applicable, in proceedings under section 1014.

"At common law a magistrate could not lawfully commit except upon oath. When the witnesses were brought before him, he was required to take their depositions as to the facts and circumstances within their knowledge showing criminality; the defendant at length acquired the right to cross-examine the complainant's witnesses, and to produce witnesses in his own behalf; and on the facts thus ascertained, the magistrate was to determine the question of probable cause. 1 Chit. Cr. Law, 33, 34, 78, 79; 1 Tayl. Ev. sec. 484, note 2. Provisions to this effect were early incorporated in the statutes of New York,

were re-enacted in the Revised Statutes (2 Rev. Stat. 706), and are all stated in fuller detail in the existing Code of Criminal Procedure, adopted in 1881 (Laws 1881, c. 442; Code Cr. Pro. secs. 148, 150, 194, 207, 208). If a magistrate commits upon oath of belief or suspicion only, without any statement of facts and circumstances showing probable guilt, he is liable to an action of false imprisonment. 1 Chit. Cr. Law, 34; *Blodgett v. Race*, (1879), 18 Hun. 132. See *In re Rothaker*, (1882), 11 Abb. N. C. 122.

"The construction given to the fourth amendment of the Constitution is to the same effect. Chief Justice Marshall, in the Case of *Bollman*, (1807), 4 Cranch, 129, says: This probable cause, therefore, ought to be proved by testimony in itself legal, and which, though from the nature of the case must be *ex parte*, ought in most other respects to be such as a court and jury might hear.

"*In re Rule of Court*, (1877), 3 Woods, 502, Fed. Cas. No. 12,126, Mr. Justice Bradley says: It is plain upon this fundamental enunciation * * * that the probable cause referred to, which must be supported by oath or affirmation, must be submitted to the committing magistrate himself, and not merely to an official accuser; so that he, the magistrate, may exercise his own judgment on the sufficiency of the grounds shown for believing the accused person guilty. In other words, the magistrate ought to have before him the oath of the real accuser, presented either in the form of an affidavit, or taken down by himself by personal examination, exhibiting the facts on which the charge is based, and on which the belief or suspicion of guilt is founded. The magistrate can then judge for himself and not trust to the judgment of another, whether sufficient and probable cause exists for issuing the warrant.

"Accordingly, a rule was formally established in that circuit that—

"No warrant of arrest shall be issued by any commissioner upon mere belief or suspicion of the person making such charge; but only upon probable cause, supported by oath or affirmation of such person, in which shall be stated the facts within his own

knowledge constituting the grounds for such a belief or suspicion.

“The same rule applies as on informations. U. S. v. Tureaund, (1884), 20 Fed. 621; U. S. v. Polite, (1888), 35 Fed. 58.

“The fundamental requirements, therefore, of the fourth amendment to the Constitution of the United States, and of the practice of this State, made applicable by section 1014, are that the facts and circumstances tending to show criminality shall be made to appear to the magistrate on oath, whether upon examination by the magistrate himself, or by affidavit, or deposition; that if the defendant demand an examination, the complainant’s witnesses if within the county, shall be recalled, if desired, for cross-examination, and the defendant allowed witnesses in his own behalf; and that the magistrate must himself find in the facts thus shown sufficient probable cause, independent of the belief of other persons.

“There is no express provision either by Congress, or by the law of this State, as to the reception or effect of an indictment found in another State or district as evidence before a committing magistrate; though in California a State statute is said to make such an indictment legal evidence. U. S. v. Haskins, (1875), 2 Sawy. 262, Fed. Cas. No. 15,322. In New York such a question in the State practice never arises; because after indictment found in one county the offender, if in another county, is removed by a bench warrant, and not by proceedings before a committing magistrate. In proceedings under section 1014 in this State, therefore, a certified copy of a foreign indictment must stand upon the general rules applicable to preliminary examinations; and by these rules it is at best, as stated by Lowell, J., in U. S. v. Pope, *supra*, but secondary evidence of the facts constituting the offense, and hence in no way conclusive.”

CHAPTER V.

LEGISLATION BY THE STATES.

- § 35. Federal Law Supreme.
- § 36. The Right of States to Legislate.
- § 37. The Law Prior to the Confederation and Constitution.
- § 38. The Supreme Court on State Legislation.
- § 39. State Power to Legislate as Viewed by State Supreme Courts.
 - a. Massachusetts.
 - b. New York.
 - c. Ohio.
 - d. Nevada.
 - e. Virginia.
 - f. Alabama.
 - g. Indiana.
 - h. North Carolina.
 - i. Texas.
 - j. California.

§ 35. Federal Law Supreme.—It is universally conceded that the clause of the Constitution referring to fugitives from the justice of one State to another, and the act of Congress of 1793, in aid thereof, and known as sections 5278 and 5279, Revised Statutes of the United States, constitute the supreme law of the land on this subject. Its force and effect is not only paramount, so far as the Federal government is concerned, but it is equally as binding upon each and every State as is the individual constitution of each State. No State by constitutional provision or statutory enactment can, in the least manner, limit or modify this Federal law pertaining to the arrest and surrender of fugitive criminals from one State to another. It is true that every State has enacted statutes on this subject, in aid of and auxiliary to the Federal law, nevertheless, in order that such statutes may have any validity or authority as law and command any respect from the courts, they must not, in any

respect, run counter to the Constitution of the United States and to sections 5278 and 5279 of the Revised Statutes. This assumption of power by the States to regulate certain phases of interstate rendition, by legislative enactments, has never been seriously disputed or controverted because such State legislation has been largely free from all encroachments against this law; and has tended to promote the accomplishment of the very purpose contemplated by the passage of the original law, namely, the arrest, surrender, and punishment of the guilty, who may flee from justice.

§ 36. Right of States to Legislate.—A casual glance at the article of the Constitution of the United States, relating to fugitives from justice, and to the act of Congress of 1793, in aid thereof, it will be observed that, upon many phases of this subject, *both are silent*:

1. As to what shall be done with a fugitive from justice *prior* to the demand for his arrest and rendition.

2. As to the *mode of procedure* in securing the arrest of the person demanded and making the delivery to the demanding State.

3. As to *compelling* executive compliance to a requisition of the demanding State, having all the requirements of the law.

4. As to the *manner* of ascertaining whether the accused, within the meaning of the Constitution, is a fugitive from justice or not.

5. As to how the question of *identity*, when raised, shall be determined.

6. As to the scope and extent of the *inquiry* on a writ of *habeas corpus*.

7. As to the particular *form* of the certificate of authentication.

Clearly under the Constitution Congress was invested with exclusive authority to legislate on interstate rendition, if not by the express terms of article IV, section 2, then unquestionably by implication. And in exercise of that right the act of 1793 was passed and since that time,

Congress has not deemed it necessary to legislate upon any of the phases herein mentioned. Why this remarkable legislative silence by Congress? Is it not possible that it was intended to share this legislative jurisdiction with the several States of the Union? The States themselves have regarded interstate rendition as a concurrent field of legislation, and therefore, they have not hesitated to enact laws covering the phases omitted by Congress, as well as other laws auxiliary to the Constitution and laws of the United States on this subject.

§ 37. The Law Prior to the Confederation and Constitution.—Prior to the adoption of the Articles of Confederation and before the ratification of the Constitution of the United States, all power relating to the arrest and surrender of fleeing criminals from one State to another, was lodged exclusively in the States themselves, by a joint agreement entered into by and between the several municipalities or colonies or States, which had been long in effect, and was practically an extension of jurisdictional power of one State into that of another—in other words, the officers of one State by permission of the proper authorities of the State to be invaded and in which the fugitive had taken refuge, might enter such State, arrest and bring back the fugitive criminal guilty of a crime against the laws of the pursuing State. Under this arrangement the judiciary alone was invested with the power to demand, pursue and bring back fleeing criminals. From 1643, the year of the first colonial agreement, until 1777, the year of the adoption of the Articles of Confederation, one hundred and thirty-four years, this judicial system of rendition remained in full force and effect. The formation of the “United States of America”—1778—marked the *end* of State control over interstate rendition of fugitives from justice, and 1793—when the act of Congress was passed—was the beginning of Federal rendition vested in and confided to the executive power of the State from which the fugitive fled and that of the State where he has taken refuge. In

consequence of this surrender of State jurisdiction over fleeing criminals, it has been constantly intimated by the courts, and especially the Federal courts, that there was some doubt as to the legality of State legislation relating to interstate rendition. But the great weight of judicial authority, Federal and State, hold to the doctrine that State legislation, auxiliary to interstate rendition, is not in violation of the Constitution except when repugnant to the plain letter of the Federal law on that subject.

§ 38. The Supreme Court on State Legislation.—One of the early cases to deny the right of the States to legislate on this subject was that of *Prigg v. The Commonwealth of Pennsylvania*, (1842), 16 Pet. 539. Mr. Justice Story in delivering the opinion of the Supreme Court of the United States, used the following language:

“If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the State legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulation, and what they deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does not prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. This doctrine was fully recognized by this court, in the case of *Houston v. Moore*, (1820), 5 Wheat. 1, 21, 22, where it was expressly held that, when Congress have exercised a power over a particular subject given them by the Constitution, it is not competent for State legislation to add to the provisions of Congress on that subject; for that the will of Congress upon the whole subject is as clearly established by what it had not declared as by what it had expressed.”

Plain and unmistakable as these words may be and imposing as they do, according to the general meaning

of the same, a complete prohibition against all legislation by the States on interstate rendition; still the language of the opinion, just quoted, has not been regarded nor considered as anything like authority, either by the State Legislatures or by the courts, for excluding or prohibiting any and all legislation by the States of the Union on that particular subject. Like many of the pronouncements of that august tribunal, it must be admitted, that Mr. Justice Story's words are without the slightest authority and binding force, because that question was not properly before the court for decision and therefore, the court itself was without jurisdiction to pass upon the question as decided, and hence, the utterance was merely dictum. This question remains undecided by the court of last resort.

§ 39. State Power to Legislate as Viewed by State Supreme Courts.—The supreme judicial court of the State of Massachusetts was among the first State courts to assert and maintain that the legislature had the power and authority to enact such statutes, not inconsistent with the Federal law, as might be thought necessary. In the *Commonwealth v. Tracy*, (1843), 5 Met. 549, the chief justice speaking for the supreme court, said:

(a) **Massachusetts.**

“It is competent for any State to make all such laws, (in aid of interstate rendition) as in the judgment of the legislature may be necessary to secure the peace, and promote good order, within its borders. The provisions in question are primarily intended, no doubt, to aid in the discharge of the important duty due to other States, of surrendering fugitives from justice, by taking precautionary measures to secure their persons. But we think it manifest, that this is not the sole object. The persons described are those who have recently committed known crimes in adjoining States, and fled into this. Being liable to be demanded and surrendered, as fugitives from justice, may be considered as *descriptio personarum*; and it significantly de-

scribes a class of persons dangerous to the security and peace of our own community. Their presence is likely to cause disturbances. A wise government, bound to maintain peace and good order within its territories and authorized to exercise a salutary vigilance and restraint over all persons within its jurisdiction, may well provide for arresting such persons, and subjecting them to a judicial examination, and requiring them to give bail for their appearance and good behavior, or be imprisoned, if they be found to have committed capital offenses in other States, until due inquiry can be made, and all persons injured by them have an opportunity to institute such proceedings, criminal or civil, as justice may require. A government is not bound to wait till its own laws are violated. Reasonable apprehension of danger is sufficient to justify a preliminary interposition to prevent it. It is analogous to the case of persons, who by their language or conduct have shown themselves dangerous; they may be secured by bail, or by actual imprisonment, to prevent mischief.

“With this view of the power of the State, and the purposes of the law, the court are of the opinion, that the provision of the Rev. Sts., c. 142, sec. 8, authorizing any court or magistrate, on complaint against any person found within this State, charged with an offense committed in any other State and liable by the Constitution and laws of the United States to be delivered over &c., to issue a warrant and cause such person to be held for examination, and imprisoned or bailed for a limited time, is a wise law and one which the legislature are competent to make and enforce, independently of their constitutional obligation to surrender such person to other States, for trial and punishment. It is a provision obviously not repugnant to the Constitution and laws of the United States, nor tending to impair the rights, or relax the duties, intended to be secured by them. To this extent therefore, the court are of the opinion that this law is constitutional and valid; one that the legislature had the authority to pass.”

(b) New York.

The court of appeals of the State of New York in *People ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 182, 64 N. E. 825, 92 Am. St. 706, 60 L. R. A. 774, Judge Cullen, long an ornament to the bench of New York, in delivering the opinion in this case, used the following language:

“The Constitution and laws of the State of New York, therefore, control the decision of the question we are now considering. In the *Matter of Guden*, (1871), 171 N. Y. 529, we held that the power given to the governor to remove a sheriff upon charges and after a hearing, was executive discretion, and the exercise of that power was not subject to review by the courts. But the question here is of an entirely different character. It involves the liberty of the citizen. Speaking of the division of powers among the three branches of the government, Mr. Chief Justice Parker, in the *Guden* case, said: ‘There resides in the people of this and every State an absolute power to prescribe rules of action, through legislation, to enforce rules of action and to transact generally the affairs of government, through executive acts, and to determine controversies between, enforce rights belonging to and redress wrongs done to, citizens of the State, through the courts.’ * * *

The writ of *habeas corpus*, is in this State available to every person imprisoned or deprived of his liberty, unless he is restrained under the authority of the Federal government or unless he is committed by virtue of a final judgment or decree of a competent tribunal of jurisdiction, or the final order of such a tribunal punishing him for contempt. The warrant of the governor is not a final judgment nor a decree, and even were it such it would be the duty of the court to see whether the jurisdictional facts exist which are necessary to authorize the action of the governor. The provision of section 827 of the Code of Criminal Procedure, directing that any person arrested on the governor’s warrant shall be brought before a judge of a court of record and informed of his right to a writ of *habeas corpus* to

inquire into his identity with the person named in the warrant does not assume to limit the inquiry on a writ of *habeas corpus* to the questions of identity. It was enacted for the benefit of any person arrested under such warrant and solely as an additional safeguard against illegal removal from the State."

(c) **Ohio.**

The supreme court of the State of Ohio, unanimously held, in *Ex parte Ammons*, (1878), 34 Ohio St. 518, that the act of the general assembly of March 23, 1875, (75 Ohio L. 79), relating to fugitives from justice, was a valid enactment, in so far as it is in aid of the provisions of the Constitution of the United States and act of Congress on that subject. The means by which the fugitive is "to be arrested and secured" are not provided by the act of Congress; hence, the legislation of a State may and should provide proper and adequate means and facilities for the accomplishment of such rendition. Admitting that it is not within the power of a State legislature to make provisions in conflict with the laws of Congress on this subject, it is quite clear that State legislation in aid of congressional enactments is not objectional. In *Thomas v. Evans*, (1905), 73 Ohio St. 145, 76 N. E. 862, *Ammons* case approved.

(d) **Nevada.**

The supreme court of the State of Nevada in *Ex parte Lorraine*, (1881), 16 Nev. 63, held that the State statute requiring that, "in order to hold a fugitive from justice to await requisition of the governor of another State, it must affirmatively appear from the complaint filed before the committing magistrate in this State: 1. That a crime has been committed in the other State. 2. That the accused has been charged in that State with the commission of such crime. 3. That he has fled from justice and is within this State," was valid and in no way conflicted with the Federal law.

(e) Virginia.

In the United States district court of the eastern district of Virginia, in the case of *Ex parte McKean*, (1878), 3 Hughes, (U. S.) 23, in the course of a well considered opinion in a *habeas corpus* case, wherein it was sought to secure the release of one McKean, an alleged fugitive from justice, the district judge said:

The State of Virginia has adopted provisions similar to, if not identical, with those of the Constitution and laws of the United States on this subject, and whether she has done so expressly or not, these latter provisions are a part of her law and are obligatory upon her officers and courts. It has been held that the power of Congress to legislate on this subject is exclusive, and that its law is the paramount law of the subject.

(f) Alabama.

The supreme court of the State of Alabama in the case of *In re Mohr*, (1883), 73 Ala. 503, 2 Ala. L. J. 457, 49 Am. Rep. 63, through Judge Somerville, one of the justices of that court, it was said: "It now seems to be the better opinion that where State laws on this subject, (interstate rendition), are not repugnant, but auxiliary, to those passed by Congress, they may be upheld upon the principle of the right to exercise the power of domestic police."

(g) Indiana.

The supreme court of the State of Indiana in *Robinson v. Flanders*, (1867), 29 Ind. 10, held that, inasmuch as Congress had not prescribed the precise steps to be taken in securing the arrest and delivery of the party demanded, it was competent and proper for the legislature of the State to adopt such reasonable laws on the subject as would be calculated to give effect to the obligation imposed by the Constitution, and that, to this end, a State law requiring the officer making the arrest to take the party before a judge for the purpose of identi-

fication, and also the judge to determine this question, is to be deemed valid.

In a later case *Hyland v. Rochelle*, (1913), 179 Ind. 695, 100 N. E. 842, Judge Cox of the supreme court, in a dissenting opinion, in referring to the right of States to legislate on interstate rendition, gave the following convincing reason showing that the Supreme Court of the United States had recognized such right:

“It is true that the Supreme Court of the United States has decided that no obligation is imposed *by the Constitution and laws of the United States* on the agent of the demanding State to so time the arrest of one alleged to be a fugitive from justice and so conduct his deportation from the surrendering State, as to afford him a convenient opportunity before some tribunal, sitting in the latter State, upon *habeas corpus* or otherwise, to test the question whether he was a fugitive from justice and as such liable, under the act of Congress, to be conveyed to the demanding State for trial there. (*Pettibone v. Nichols*, 1906), 203 U. S. 192, 27 Sup. Ct. 111, 57 L. ed. 148.) But it will be observed by a glance at the official report of that case, that in the opinion of the court written by Mr. Justice Harlan, the words ‘by the Constitution and laws of the United States,’ are italicised as they are given above. Why was the court so particular to place stress upon these words? It seems to me to be clear that it was done to obtrude the implication that State laws might impose the obligation to afford opportunity for a hearing on such question ‘upon *habeas corpus* or otherwise.’”

(h) North Carolina.

The supreme court of the State of North Carolina in a remarkable case, *State v. Hall*, (1894), 115 N. C. 811, 20 S. E. 729, 44 Am. St. 501, 28 L. R. A. 289, not only upholds the right of a State to legislate upon the subject of interstate rendition, but goes a step further, and declares that a State may provide by statute, for the *arrest* and *surrender* upon requisition of persons indicted.

able for crime in another State, although they may not be fugitives from justice.

Such a statute, if passed by the legislature of North Carolina, would be about as *absurd*, as the law enacted by the State of Illinois in 1845, requiring the governor at his discretion, to surrender certain fugitives "without requiring a copy of an indictment to accompany the demand." Both in conflict with the Federal law and absolutely void.

(i) Texas.

The criminal court of appeals of the State of Texas, in *Ex parte Bergman*, (1910), 60 Tex. Crim. 8, 130 S. W. 174, held that matters of interstate rendition are under the Federal Constitution and laws, and while State statutes in aid and furtherance of such Constitution and laws have been upheld and should be when called into use, it nevertheless does not affect the validity of the writ, issued under the authority of the Federal Constitution and laws, that the detailed provisions of the State statutes are not in any given case required or used. And that where, in accordance with a warrant properly and legally issued by the governor of this State upon due and legal request from the chief executive of another State, the relator was held in custody, he cannot be heard to complain that he was not originally arrested in a particular manner directed by State statute. The Texas court further held that the Federal Constitution and laws define as to who is a fugitive from justice, and are not controlled by State legislation in any respect.

(j) California.

The supreme court of the State of California, in *Ex parte Cubreth*, (1875), 49 Cal. 436, held that the State law, "authorizing the arrest of a fugitive from justice who has fled from another State, before a demand for his surrender by the executive authority of the State from which he fled, and his detention for a reasonable time to afford an opportunity for such executive de-

mand," is not in conflict with the second section of article four of the Constitution of the United States. In rendering the opinion of the court the chief justice said:

"That while the provision of the Constitution referred to, required that the fugitive should be surrendered upon the demand of the executive of the State in which the crime is charged to have been committed, it did not otherwise, or in the absence of the executive demand, undertake to define the duties or limit the authority of the State within which the fugitive from justice might be found. The Constitution of the United States does not assume to deal with the question, before the proper executive demand shall have been made, while, upon the other hand, the statute provides for the detention of the fugitive for a reasonable length of time in advance of, and to afford an opportunity for, the executive demand upon which the surrender is to be made.

* * * The paramount constitutional duty of the State to make the surrender upon proper executive demand was in nowise in conflict with its reserved power to deal with the fugitive in the absence of such demand."

CHAPTER VI.

EXECUTIVE DUTY AND POWER.

- § 40. Origin of Executive Authority
- § 41. Statute Strictly Construed.
- § 42. No Delegation of Power.
- § 43. Extent of Executive Authority.
- § 44. Governor Cullom on Executive Duty.
- § 45. Conditions Precedent to Honoring Requisitions.
- § 46. The Demand Discretionary with the Governor.
- § 47. The Surrender—No Discretion with Governor.

§ 40. **Origin of Executive Authority.**—Whatever of authority the governor of the demanding State or Territory, or the governor of the surrendering State or Territory, may have in rendition procedure is derived solely and entirely from paragraph 2, section 2, article IV of the Federal Constitution and section 5278 of the Revised Statutes of the United States. (People *ex rel.* Marshall v. Moore, (1915), 153 N. Y. Supp. 10.) The power of the former to demand the apprehension and return of the fleeing criminal or fugitive from justice, found in another jurisdiction, as well as the right of the latter to cause the arrest and deportation of such criminal or fugitive from justice, is a constitutional and statutory grant of power to these State executives, and they alone—each in his respective State and official capacity—must carefully and legally conform to every requirement of this law, otherwise every act which they may perform is absolutely void and may result in the discharge of the fugitive by the courts on *habeas corpus*. The courts, both Federal and State, have uniformly guarded with care the rights and liberties of the citizen in interstate rendition proceedings and have generally insisted upon the strictest compliance with every requirement of the law pertaining to the arrest and rendition of fugitives from justice. Before the governor of the demanding

State can take one legal step towards the rendition of a person known and charged to be a fugitive from justice from his State, there must have been begun judicial proceedings against the alleged fugitive, either by an indictment found or an affidavit made before a magistrate, substantially charging him with the commission of "treason, felony, or other crime." The governor also must certify as authentic the copy of the indictment or affidavit charging crime against the fugitive and the governor must also be satisfied that the party charged with crime in his State is, beyond question, a fugitive from the justice of his State, in other words that the criminal has fled from the jurisdiction of the home State to avoid arrest and punishment for the alleged crime. The governor is also empowered to appoint an agent or messenger to represent him in receiving the fugitive, and holding him in custody while being transported from the place of his arrest to the county of the State wherein the crime was committed. Such authority is derived from the act of Congress of 1793, and from certain legislation passed by the various legislatures of all the States. The person so acting as such agent or messenger is not a Federal official, though appointed by the authority of the laws of the United States, but merely a State officer of the State making the demand for the arrest and return of the alleged fugitive. See *Robb v. Connolly*, (1884), 111 U. S. 624. An action for false imprisonment will not lie against the agent, in the event that the fugitive is discharged by a court or judge of the asylum State on *habeas corpus*. See *Matter of Titus*, (1878), 8 Ben. (U. S.) 411; *Pettus v. State*, (1871), 42 Ga. 358; *In re Bull*, (1877), 4 Dill. 323.

§ 41. Statute Strictly Construed.—These prerequisites must be carefully followed by the governor making the demand for the rendition of the fleeing criminal, even to the slightest detail, for unless he conforms strictly to section 5278, he will not only deprive himself of jurisdiction to cause the arrest and return of the fugitive,

but will absolutely destroy the right and authority of the chief executive of the asylum or surrendering State to act. Therefore, it has been held in *Hartman v. Aveline*, (1879), 63 Ind. 344, 30 Am. 217, that the mere recitals contained in the requisition for an alleged fugitive from justice are not sufficient of themselves to authorize the arrest and surrender of the fugitive. In *Ex parte Smith*, (1843), 3 McLean, 121, it was held that the statements of the governor in his requisition cannot aid a defective affidavit charging the commission of a crime, and a requisition is not of itself sufficient authority for the arrest and imprisonment of the alleged fugitive but the papers accompanying the same are all-important and taken together may justify the right of arrest and imprisonment. Nor is the affidavit of an attorney communicating information received by telegraph that the accused is charged in the other State with the commission of an offense against its laws sufficient. See *In re Rutter*, (1869), 7 Abb. Pr. N. S. 67. The fact that the requisition does not state that the affidavit was made before a magistrate or that there was a criminal proceeding pending in a proper court, will not vitiate the proceedings if it refers to annexed papers which are certified to be authentic, and which show upon their face that the proceedings were actually begun in a proper court, so held in *In re White*, (1891), 45 Fed. 237. The representations of the governor of the demanding State are of no effect unless supported by a duly authenticated copy of an indictment found or an affidavit made before a magistrate. The absence of either an indictment or an affidavit makes the whole demand void. (*Ex parte Morgan*, (1883), 20 Fed. 298; *Ex parte Thornton*, (1853), 9 Tex. Crim. 635.)

§ 42. **No Delegation of Power.**—The supreme court of the State of South Dakota, in the course of an interesting opinion on interstate rendition, in *In re Tod*, (1900), 12 S. D. 386, 12 Am. Crim. 303, 47 L. R. A. 566, 81 N. W. 637, clearly and plainly defined the duty of the governor

of the asylum State when a requisition is presented to him demanding the arrest and surrender of an alleged fugitive from justice, as follows:

“It was also shown on the hearing that the warrant purporting to be signed by the executive of this State was never in fact issued by him, but was issued by some person other than the governor. The duty of examining requisition papers, passing upon their validity, and issuing his warrant devolves upon the governor personally. It is a power that cannot be delegated to any other person. The liberty of the citizen is involved and he can only be restrained of that liberty by the personal act of the governor, upon whom the power has been conferred by the Constitution and laws of the United States, and the Constitution and laws of this State. The execution of the power requires careful examination of the requisition papers, and involves the exercise of a sound judgment, aided, in case of necessity, by the advice of the attorney general of the State. The liberty of the citizen would be in great danger if any person could be allowed to issue such extradition warrant in the absence of the governor.”

§ 43. Extent of Executive Authority.—In 1879, the late Hon. Shelby M. Cullom was governor of the State of Illinois, and an effort was made in the latter part of that year to arrest and surrender two citizens of the State upon the requisition of the executive of Pennsylvania. The alleged fugitives were charged with the crime of murder committed fourteen years prior to the time above stated in the State mentioned. Gov. Cullom, upon examination of the requisition and accompanying papers, issued his warrant for the arrest and deportation of the accused men, they were taken into custody, but before they were removed from the State of Illinois, the governor granted them a hearing on a motion to revoke his warrant. After a hearing covering several days, wherein counsel both for the State of Pennsylvania and the alleged fugitives ably argued the law propositions arising from the facts of this peculiar case. Gov.

Cullom in an able and well-considered opinion, showing great research and fairness, revoked his warrant and ordered the discharge of the alleged fugitives. The opinion itself is worthy of the greatest publicity because of its sound reasoning and clear exposition of the law pertaining to the duty of governors of asylum States, arising from interstate rendition.

§ 44. Governor Cullom on Executive Duty.—Referring to executive duty Gov. Cullom said:

“It is undoubtedly the duty of the executive of each State to give full effect to that provision of the Federal Constitution which requires the return of the fugitive from justice, and to respect all laws for the purpose of enforcing that provision. I have no inclination to disregard the obligation thus created, even though no power exists by which my action could be controlled. On the other hand, the seizure of a citizen of this State and his forcible transportation to a distant jurisdiction, beyond all protection from the laws of his own State, is a proceeding so serious that it can only be justified by positive law and the concurrence of all the facts required by law. The governor of a State has a very solemn duty to perform toward his own people, as well as toward other States. He should see that no violent proceedings be taken against citizens who rely upon him for protection, unless such proceedings be fully warranted by law. * * *

“It is urged by those who support the requisition of the governor of Pennsylvania that I have no discretion in the matter, but must surrender the men if the papers presented are regular upon their face. And this is to my mind the most important question. Have I the right to consider any extraneous facts—the lapse of time, the passiveness of the public prosecutor of Pennsylvania, the hardships of respectable families in this State, or any other matter beyond the very letter of the record?

“The Supreme Court of the United States, in the celebrated case of *Kentucky v. Dennison*, (1860), 24 Howard 66, made use of language which would seem

to justify the conclusion that the governor of a State to whom a requisition is directed, demanding the return of an alleged fugitive, has only a ministerial duty to perform and has no authority to look beyond the record.

“The words used by the court are very strong, and if they are to be taken without qualification, would seem to be conclusive. Yet it is entirely certain that notwithstanding that decision it has been the practice of the governors of many States to look beyond the papers presented. It is clear that where a prisoner is held to answer a criminal charge, in the State where found, he will not be surrendered upon the demand of the executive authority of another State. This has always been the practice in Illinois, as well as in all other States so far as I know. But since the case of *Kentucky v. Dennison*, the Supreme Court of the United States itself has conclusively shown that the words used by the court, in the case last cited, are not to be taken without qualification. In *Taylor v. Taintor*, (1872), 16 Wallace, p. 366, a peculiar state of facts was shown. One McGuire was indicted in Connecticut and gave bail. He then went to the State of New York, but was taken from there on a requisition from the governor of Maine, and was imprisoned in the State. He did not appear to answer the indictment in Connecticut, and forfeited his recognizance. Judgment being given against his bondsmen, they carried the case to the United States Supreme Court, where the judgment was affirmed. In discussing the questions presented the court say:

“‘Had the facts been made known to the executive of New York in time it is to be presumed he would have ordered McGuire to be delivered to them (the bondsmen) and not the authority of Maine.’

“Again on page 374 the court say: ‘It is true the constitutional provision and the law of Congress under which the arrest and delivery were made are obligatory on every State, and a part of the law of every State. But the duty enjoined is several and not joint, and every governor acts independently and for himself. There can be no joint demand or

refusal. In the event of refusal, the State making the demand must submit. There is no alternative. In the case of McGuire no impediment appeared to the governor of New York, and he properly yielded obedience. The governor of Connecticut, if applied to, might have rightfully postponed compliance. If advised in season he might have intervened and by a requisition have asserted the claim of Connecticut. It would then have been for the governor of New York to decide between the conflicting demands. Whatever the decision, if the proceedings were regular, it would have been conclusive. There could have been no review and no inquiry going behind it.' ”

“It thus appears that the language used in *Kentucky v. Dennison* is not unqualified, that an executive officer to whom a requisition is presented may do something more than inquire into the regularity of the record, and that however regular the record there still may be impediments of which the executive of whom the demand is made must be the judge. I refer to this case, and to the practice in this and other States, for the purpose of showing that whether my duties be regarded as purely ministerial or quasi judicial, I am not only empowered, but required to consider certain extraneous facts not appearing in the record presented to me.”

There can be no question but that Gov. Cullom was clearly right in his interpretation of the law, with reference to the duty of the executive of the asylum State, the great weight of authorities sustain him, and the lapse of years, since his opinion was written, have strengthened rather than weakened his position.

§ 45. Conditions Precedent to Honoring Requisition.—There is much uncertainty in the decisions as to the necessity and sufficiency of proof of flight by the fugitive to be presented to the governors before rendition can be invoked. It has been stated that the governor must be satisfied that the accused person fled from justice. And that in addition to proof that a person is charged with crime it was held in the case of *In re Jackson*, (1878), 2

Flipp. 183, that it is necessary to show that he has fled from justice, and this must be done by sworn evidence such as will authorize a warrant of arrest in any other case. In *Ex parte Reggel, supra*, Mr. Justice Harlan said the act of Congress did not impose upon the executive authority of the territory the duty of surrendering the appellant, (the fugitive) unless it was made to appear in some proper way that he was a fugitive from justice.

§ 46. The Demand Discretionary with Governor.—It is generally conceded that whether the executive of a State or Territory shall actually make a demand upon the executive authority of another State or Territory, for the arrest and return of a fugitive from justice, is a question which both the Constitution and the act of Congress leave wholly to his discretion. He alone is the judge, and when he decides either for rendition or against rendition, that settles the matter, and from his decision there is no appeal. However, it has been held in *Ex parte Cubreth*, (1875), 49 Cal. 436, that this discretion left with the executive, may be regulated by State laws, provided they are not inconsistent with the Constitution and laws of the United States.

§ 47. The Surrender—No Discretion with Governor.—It is also a fact, uniformly held so by the courts, that the executive of the surrendering State, more generally referred to as the “asylum State,” is clothed with no discretion whatever by the law on rendition, but is commanded to do the act required to be done. Chief Justice Taney, in the celebrated case of *Kentucky v. Dennison, supra*, referring to the executive of the surrendering State, said: “It never has been supposed that this duty involved any discretionary power or made him anything more than a mere ministerial officer.” The act required to be done is the arrest and surrender of the fugitive and although he may have no discretion in the matter—his duty being merely ministerial—yet, the governor of the surrendering State must be satisfied of certain facts

—that the accused is a fugitive from justice, that he is substantially charged with crime and that the indictment or affidavit is duly authenticated—before he dare honor the requisition. (*Ex parte* Denning, (1907), 50 Tex. Crim. 629.)

CHAPTER VII.

WHO ARE FUGITIVES FROM JUSTICE?

- § 48. Misconception of the Law.
- § 49. Executive Carelessness.
- § 50. Persons Held to be Fugitives.
- § 51. The Fugitive Doctrine Discussed.
- § 52. A Noticeable Difference of Opinion.
- § 53. A Final Determination by the Supreme Court.
- § 54. A Waiver of Jurisdictional Defects.
- § 55. "Constructive Presence."
- § 56. Presence in State when Crime Is Committed Is Necessary.
- § 57. Unreasonable Conclusion by the Supreme Court.
- § 58. A Celebrated Case.
- § 59. A Summary of Supreme Court Decisions.
 - 1. A Fugitive from Justice.
 - 2. Demand for His Arrest and Surrender.
 - 3. Proof of Crime and Proof of Flight Essential.
 - 4. Executive Determination.
 - 5. Prima Facie Case.
 - 6. Habeas Corpus a Proper Remedy.
 - 7. Legality of Arrest and Detention.
- § 60. An Escape Convict or Person under Parole, when a Fugitive.
- § 61. A Late Decision by the Supreme Court.
- § 62. The Earlier Cases of Flight.
- § 63. Rendition of Witnesses.

§ 48. Misconception of the Law.—The more or less uncertainty that surrounds the answer to this question, is due largely to a misconception as to just what the courts have held is the law, in interstate rendition proceedings. The controlling cases, fully and explicitly answering this question, are not so numerous as to obscure the legal horizon; and yet, many lawyers, and even judges on the bench, have fallen into the error of holding that, because the alleged fugitive is *found* in the asylum State, he is therefore a fugitive from the justice of the demanding State. The existence of the fact that, the accused is found in the asylum State, is not always conclusive that he is a fugitive from the justice of the de-

manding State. A careless consideration of the authorities and hastily formed conclusions, are mainly responsible for such errors, which frequently result in the miscarriage of justice. The sufferers generally being poor and unfortunate persons, financially unable to bear the expense of a prolonged legal contest. The consequence is that the alleged fugitive is forced to go to the demanding State, hundreds of miles from home and friends, there to remain in prison for an indefinite length of time, before having an opportunity to establish his innocence of the crime charged. The author appeared as counsel for an alleged fugitive from justice in Chicago in 1913, and the facts as set forth in the subjoined communication, which was published in the "Chicago Daily Law Bulletin," under date of April 1, 1914, clearly shows one of the instances referred to in the text of injustice too frequently suffered by this class of so-called criminals. The article appearing in the Bulletin is as follows:

"In July, 1913, Roy Blackburn of Chicago, and one of his friends, George Franklin, went to the country near Grand Rapids, Michigan, to spend a few days fishing and enjoying the country air and during their sojourn near Grand Rapids, they frequently visited that city, and as a matter of course they met and became acquainted with many people there. They remained there only about two weeks.

"On September 10, 1913, between the hours of six and seven o'clock in the evening, in Grand Rapids, Michigan, two men entered the jewelry store of Wm. J. Townsend, shot Mr. Townsend and two of his clerks, the latter two being killed instantly, Mr. Townsend dying several days after being shot. The store was said to have been robbed of considerable jewelry and diamonds. Many people are said to have witnessed the hold-up and shooting.

"A month or so after the shooting and robbery, Roy Blackburn and George Franklin were arrested in Chicago, charged with the commission of the crime. A complaint had been filed in the municipal court of Chicago, in accordance with the statute of

Illinois, charging these men with murder in Grand Rapids, Michigan, on the 10th day of September, 1913, and with being fugitives from the justice of that State. The court having the jurisdiction to hear and determine this question in Illinois was the municipal court of Chicago, no extradition had been demanded by the State of Michigan at this time, and so the case came on to be heard by that court, Judge Stewart presiding. Witnesses appeared from Grand Rapids, who testified that Roy Blackburn was one of the persons guilty of the crime. Only one witness was able positively to identify George Franklin as the other. The case was dismissed as to George Franklin at the request of the prosecuting attorney from Grand Rapids. Sixteen witnesses were carefully examined and cross-examined and clearly established the fact that Roy Blackburn was not personally present in Michigan on the day and date the crime was committed. Judge Stewart finally found both Blackburn and Franklin 'not guilty,' and ordered the sheriff of Cook county to discharge them. While the hearing was in progress before Judge Stewart, covering a period of several days, the governor of Illinois issued his warrant of rendition for both Blackburn and Franklin, therefore the sheriff declined to obey the order of the municipal court judge.

"A *habeas corpus* writ had been previously issued from the superior court upon the petition of Blackburn and Franklin, claiming that they were being unlawfully restrained of their liberty. The superior court judge flatly refused to hear this case while the other was pending in the municipal court. After the termination of this latter hearing, the superior court judge heard the case *ab initio*, so far as it referred to Roy Blackburn, and after a repetition of all the evidence heard by Judge Stewart, and argument of counsel, Roy Blackburn was remanded to the custody of the sheriff and ordered delivered to the messenger from Michigan as a fugitive from the justice of that state. In less than three hours Blackburn was landed in jail at Grand Rapids. During the past month he was arraigned and tried for this

horrible and atrocious crime in the circuit court at Grand Rapids. The jury did not agree on a verdict—eleven for acquittal and one for conviction.

“The hearing before Judge Stewart of the Municipal court was clearly in compliance with the laws of Illinois, relating to fugitives from justice *prior to demand* on the governor for extradition, and his finding of ‘not guilty’ should have ended the whole proceeding, yet this citizen of Illinois was held in the jail at Grand Rapids for six months, innocent of the crime charged. Last Saturday, he was released and returned to Chicago a free man.

“It is not the intent or purpose of the writer to criticise the finding of the judge ordering the surrender of Blackburn as a fugitive from justice from the state of Michigan but to suggest to the bench and bar of the State the necessity of a statute permitting an appeal directly to the supreme court in all *habeas corpus* cases. Justice and fair-play to all parties concerned demand this. James A. Scott.”

In view of this state of facts, it is not surprising that the Supreme Court of the United States, in *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. ed. 250, warned all governors to be cautious in honoring requisitions, and that something more than mere regularity in the papers presented, should be required—Proof—absolute and positive, that the party demanded is in fact a fugitive from justice. The language of the Court is as follows:

“Upon the executive of the State in which the accused is found rests the responsibility of determining, in some legal mode, whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof, that the accused is, in fact, a fugitive from the justice of the demanding State.”

§ 49. Executive Carelessness.—In many of the States, in nine applications out of ten, the executive delegates to a clerk in his office the task of examining requisitions, and the accompanying papers, full reliance is placed in

the judgment of the clerk, and as a matter of course the requisition is honored and the governor's warrant is issued. The liberty of the citizen is thus jeopardized by an *ex parte* hearing in the demanding State, and an unauthorized finding in the asylum State. Too little personal attention is given by governors themselves to requisitions. On this subject it was said by the Supreme Court of the United States in *Munsey v. Clough*, (1904), 196 U. S. 364, that no governor's warrant can be legally issued for the arrest of an alleged fugitive unless the executive himself is satisfied and so finds—

1. That the party accused is a fugitive from the justice of the demanding State.

2. That the alleged fugitive is substantially charged with the commission of a crime in that State.

3. That the requisition and the accompanying papers are regular in form and fully comply with the Federal Law on interstate rendition.

§ 50. **Persons Held to be Fugitives.**—But who are fugitives from justice? In the light of the decisions of State courts, with few exceptions, it has been held that to be a fugitive from justice one must have committed a crime in the demanding State, and when wanted to answer for such crime he has left one jurisdiction and is found in another jurisdiction. For example, in the State of New Jersey, in *In re Voorhees*, (1867), 32 N. J. L. 142, it was held that “a fugitive from justice is defined to be a person who commits a crime within a State, and withdraws himself from such jurisdiction without awaiting to abide the consequences of such act.” In the State of Texas, in *Hibler v. State*, (1895), 43 Texas, 197, it was said that “a person who commits a crime in one State for which he is indicted, and departs therefrom, and is found in another State, may well be regarded as a fugitive from justice.” In New York, in *People ex rel. Draper v. Pinkerton*, (1879), 17 Hun. 199, the supreme court said that “the charge that he committed a crime in that State, coupled with the fact that

he is found in this State, is conclusive upon the question whether he is a fugitive from justice." The Massachusetts supreme court, in *Kingsbury's Case*, (1871), 106 Mass. 223, held that "one who goes into a State, commits a crime and then returns home, is as much a fugitive from justice as though he had committed a crime in the State in which he resided and then fled to some other State." The supreme court of the State of Iowa in *Taylor v. Wise*, (1910), 126 N. W. 1126, held that a person found in another State on institution of a prosecution against him, who refuses to return voluntarily, is a fugitive from justice within the rendition law, though he left the State openly, not in flight or with any intent to avoid arrest, the manner of his leaving being immaterial. The supreme court of Nevada apparently has gone the limit in declaring who may be a fugitive from justice. In the case of *In re Kuhns*, (1913), 36 Nev. 487, 137 Pac. 83, 50 L. R. A. (N. S.) 507, it was held that "a person, though not within the foreign State at the time he is charged in rendition papers with the commission of a crime therein, may nevertheless be a fugitive from justice of such foreign State, if he was an accessory to such crime or the same was committed through his agent." In South Dakota the supreme court, in *In re Tod*, (1900), 12 S. D. 386, 47 L. R. A. 566, 81 N. W. 637, 12 Am. Crim. 303, held that "while it may be necessary, to make a person a fugitive from justice, that he should leave the State where the offense is alleged to have been committed, with the intention or for the purpose of avoiding a prosecution, still we think it must appear that he left the State without the knowledge or consent, actual or implied, of the parties alleged to have been defrauded." The supreme court of North Dakota held to the reverse—see *In re Galbreath*, (1913), 24 N. D. 582, 139 N. W. 1050. A person returned to the demanding State accused of the commission of a crime and is enlarged on bail and afterwards forfeits such bail by again fleeing from the State is a fugitive from the justice of such State. *In re Hughes*, (1867), Phil. L. (N. C.) 57.

§ 51. **The Fugitive Doctrine Discussed.**—The first twenty-three words of art. IV, sec. 2, par. 2 of the United States Constitution, plainly and without equivocation, define who are fugitives from justice, in the following words:

“A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State * * *.”

The important and essential elements in this definition are the words—“who shall flee from justice”—the person alleged to be a fugitive from justice must actually have fled from the State where the crime was committed, in order to bring him clearly within the meaning of this clause of the Constitution.

The act of Congress of 1793, now known as section 5278 of the Revised Statutes of the United States, passed in aid of the provision just quoted, was intended, beyond question, to emphasize this doctrine of flight, for it will be observed that the words “has fled,” are used three times in this section in referring to the fugitive. A careful study of this constitutional provision, together with the enactment of Congress in aid thereof, will fully demonstrate that it was unmistakably contemplated by the early law-makers that a person, to be arrested and surrendered, must have committed a crime in the territory of the demanding State, and must have fled from the justice of that State. These facts constitute a prerequisite of the right of any one State to lawfully demand from another State the surrender of any person, to be transported for trial to the State making the demand. Without the existence of these facts, the crime and flight, there is no right to the requisition—no authority or power to arrest and surrender the fugitive—under the Constitution and laws of the United States. This was the ruling of the Supreme Court of the United States in *Hyatt v. People ex rel. Corkran*, (1903), 188 U. S. 691, 23 Sup. Ct. 456, 47 L. ed. 637, affirming *People ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 176, 64 N. E. 824, 92 Am. St. 706, 60 L. R. A. 774.

§ 52. **A Noticeable Difference of Opinion.**—In the decisions on this question, by the courts of the United States and those of the several States, there is a noticeable difference of opinion, some holding that if a party is charged with crime in a State, and is found in another State or Territory, this, without any other evidence, sufficiently establishes the fact that he is a fugitive from justice. This was the rule in the People *ex rel.* Draper v. Pinkerton, *supra*. Other decisions apparently based upon the theory that the finding of the governor of the asylum State, that the party wanted is a fugitive from justice, when so stated in the warrant of rendition, is absolutely conclusive. This proposition might be tenable, if not unassailable, when the governor grants a hearing to both sides and evidence *pro* and *con* is introduced before him and he makes a finding on the facts as introduced. *In re* Williard, (1913), 92 Neb. 298, 140 N. W. 170. The Supreme Court of the United States, in Hyatt v. Corkran, *supra*, strongly intimated that the courts in *habeas corpus* might not be justified in reviewing the decision of the governor in such cases. It should, nevertheless, be borne in mind that in Illinois, and many other States, no provision is made by the law, for a hearing by the fugitive before the governor; but in Illinois, for the past half a century, the governor has invariably heard both sides when application is so made for such hearing. But no Federal right is denied the fugitive when such hearing is refused him. *Ex parte* Chung Kin Tow, (1914), 218 Fed. 185. However, the vast majority of decisions, both Federal and State, hold that in *habeas corpus* proceedings, in rendition cases, the alleged fugitive may deny the fact that he is a fugitive from justice or that he was personally present in the demanding State or Territory at the time when the crime is charged to have been committed, and that the courts may hear and consider oral evidence, outside of the papers that were before the governor, in the final adjudication of this question of fact. This view is unquestionably the correct one—fully sustained by a long line of decisions as

will be observed from the following: *In re Keller*, (1888), 36 Fed. 681; *State ex rel. Arnold v. Justus*, (1901), 84 Minn. 237, 87 N. W. 770; *In re Strauss*, (1903), 126 Fed. 327; *Dennison v. Christain*, (1904), 72 Neb. 703; *Appleyard v. Commonwealth of Massachusetts*, (1906), 203 U. S. 222, 27 Sup. Ct. 122, 51 L. ed. 161; *Depoilly v. Palmer*, (1906), 28 App. Cas. 324; *McNichols v. Pease*, (1907), 207 U. S. 110, 28 Sup. Ct. 58, 52 L. ed. 121; *Commonwealth ex rel. Burlingame v. Hare*, (1908), 36 Pa. Sup. Ct. 125; *Coleman v. State*, (1908), 53 Tex. Crim. 93; *Morrison v. Dwyer*, (1909), 143 Iowa, 502, 121 N. W. 1064; *People ex rel. Genna v. McLaughlin*, (1911), 145 App. Div. (N. Y.) 513; *Ryan v. Rogers*, (1913), 21 Wyo. 311, 132 Pac. 95; *Ex parte Law*, (1911), 2 Ala. App. 257.

§ 53. **A Final Determination by the Supreme Court.**—On two different occasions the United States Supreme Court in *Ex parte Reggel*, (1885), *supra*, and *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544, refrained from deciding in each case, how far the governor's decision in the surrendering State that the accused was a fugitive from justice, might be reviewed judicially in proceedings of *habeas corpus* or whether such finding by the governor was not final. However, in several later decisions, by the same court, this question was squarely met and determined, notably in *Pettibone v. Nichols*, (1906), 203 U. S. 192, 27 Sup. Ct. 111, 51 L. ed. 148, in which the governor of Colorado issued his warrant of rendition for the arrest of the alleged fugitive, who was arrested and hurried out of the State and no opportunity allowed him to test the legality of his detention and to show that he was not a fugitive from justice. The Supreme Court said: "It is equally true that even after the issuing of such warrant, before his deportation from Colorado, it was competent for a court, Federal or State, to inquire whether he was in fact a fugitive from justice and if found not to be to discharge him from custody of the Idaho agent and prevent his deportation from Colorado."

And in *McNichols v. Pease*, (1907), *supra*, a still later case, the same court spoke out on the same question, leaving absolutely no room for doubt whatever as to its position touching the rights of alleged fugitives from justice in *habeas corpus* proceedings. The court said: "One arrested and held as a fugitive from justice, is entitled of right, upon *habeas corpus*, to question the lawfulness of his arrest and imprisonment, showing by competent evidence as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from justice of the demanding State, and thereby overcoming the presumption to the contrary arising from the face of the extradition warrant."

In *Ex parte Reggel*, (1885), *supra*, Mr. Justice Harlan, in speaking for the Supreme Court, in the course of an elaborate opinion on this subject, said:

"The only question remaining to be considered relates to the alleged want of competent evidence before the governor of Utah, at the time he issued the warrant of arrest, to prove that the appellant was a fugitive from the justice of Pennsylvania. Undoubtedly, the act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process. The statute, it is to be observed, does not prescribe the character of such proof; but that the executive authority of the Territory was not required, by the act of Congress, to cause the arrest of appellant, and his delivery to the agent appointed by the governor of Pennsylvania, without proof of the fact that he was a fugitive from justice, is, in our judgment, clear from the language of the act. Any other interpretation would lead to the conclu-

sion that the mere requisition by the executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within the limits, imposes upon the executive of the State or Territory, where the accused is found the duty of surrendering him, although he may be satisfied, from incontestable proof, that the accused had, in fact, never been in the demanding State, and therefore could not be said to have fled from its justice. Upon the executive of the State in which the accused is found rests the responsibility of determining, in some legal mode, whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof, that the accused is, in fact, a fugitive from the justice of the demanding State."

The same year, the same court, in *Roberts v. Reilly*, (1885), *supra*, held that "to be a fugitive from justice in the sense of the act of Congress regulating the subject, under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by the laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another."

To the same effect see *In re White*, (1893), 55 Fed. 54; *Ex parte Brown*, (1886), 28 Fed. 653; *In re Bloch*, (1898), 87 Fed. 981; *Hibler v. State*, (1875), *supra*; *State v. Hall*, (1894), 115 N. C. 811, 28 L. R. A. 289; *State v. Hall*, (1894), 114 N. C. 909, 28 L. R. A. 59; *State v. Richter*, 37 Minn. 436; *Drinkall v. Spiegel*, (1896), 68 Conn. 441; *In re Sultan*, (1894), 115 N. C. 57; *Depoilly v. Palmer*, (1906), *supra*; *Commonwealth ex rel. Burlingame v. Hare*, (1908), *supra*; *In re Voorhees*, (1867), *supra*.

§ 54. **A Waiver of Jurisdictional Defects.**—Some years later—in 1892—the United States Supreme Court again proclaimed its views on this subject. In *Cook v. Hart*, (1892), 146 U. S. 183, 36 L. ed. 934, 13 Sup. Ct. 40, the court besides commending the position of that court in *Ex parte Reggel*, (1885), *supra*, and *Roberts v. Reilly*, (1885), *supra*, held that it is too late for the alleged fugitive from justice to object to even jurisdictional defects, after he is brought within the territory of the demanding State and further declared that, the authorities tended to support the theory that the executive warrant has spent its force, when the accused has been delivered to the demanding State.

§ 55. **“Constructive Presence.”**—In *Hyatt v. Corkran*, (1903), *supra*, the Supreme Court in reviewing the case of the People *ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 176, wherein the supreme court of New York had discharged the accused on the ground that he was not a fugitive from justice, on writ of error affirmed the latter judgment, and again reasserted full faith in the doctrine enunciated in the *Reggel* and *Roberts v. Reilly* cases, relating to fugitives from justice.

Mr. Justice Peckham, in delivering the opinion of the court, thus settled the question of “constructive presence” in the demanding State in rendition cases:

“The language of section 5278, Revised Statutes, provides, as we think, that the act shall have been committed by an individual who was at the time of its commission personally present within the State which demands his surrender. It speaks of a demand by the executive authority of a State for the surrender of a person as a fugitive from justice, by the executive authority of a State to which such person has fled, and it provides that a copy of the indictment found, or affidavit made before a magistrate of any State, charging the person demanded with having committed treason, etc., certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, shall be produced, and it makes it

the duty of the executive authority of the State to which such person has fled to cause him to be arrested and secured. Thus the person who is sought must be one that has fled from the demanding State, and he must have fled (not necessarily directly) to the State where he is found. It is difficult to see how a person can be said to have fled from the State in which he is charged to have committed some act amounting to a crime against that State, when in fact he was not within the State at the time the act is said to have been committed. How can a person flee from a place that he was not in? He could avoid a place that he had not been in; he could omit to go to it; but how can it be said with accuracy that he has fled from a place in which he had not been present? This is neither a narrow, nor, as we think, an incorrect interpretation of the statute, it has been in existence since 1793, and we have found no case decided by this court wherein it has been held that the statute covered a case where the party was not in the State at the time when the act is alleged to have been committed. We think the plain meaning of the act requires such presence, and that it was not intended to include, as a fugitive from the justice of a State, one who has not been in the State at the time when, if ever, the offense was committed, and who had not, therefore, in fact fled therefrom. * * * He must have been there when the crime was committed, as alleged, and if not, a subsequent going there and coming away is not a flight."

This clean-cut and emphatic declaration, set at rest the so-called doctrine of "constructive presence," however, in holding that the person demanded must have been in fact "personally present" in the demanding State, when the crime was committed, the Supreme Court was only following the well-beaten path previously marked out by both Federal and State courts. Clearly upholding the doctrine enunciated by the supreme court of Iowa in *Jones v. Leonard*, (1878), 50 Iowa, 106, 32 Am. Rep. 116.

§ 56. **Presence in State when Crime is Committed Necessary.**—Several State legislatures have undertaken to enact statutes providing for the punishment of persons for certain crimes committed while not “personally present” within the jurisdiction of such States, and with a great show of righteousness the governors of these States, have held up their hands in horror, when the courts have refused to sanction the rendition of such alleged fugitives. In the very opinion just referred to Mr. Justice Peckham facetiously, yet truthfully, reminded these executives of their error in these words:

“The exercise of jurisdiction by a State to make an act committed outside its borders a crime against the State is one thing, but to assert that the party committing such act comes under the Federal statute, and is to be delivered up as a fugitive from the justice of that State, is quite a different proposition.”

However, a man may commit any number of crimes in a State without being personally present in such State. A person to be a fugitive from the justice of a State or Territory must have been personally present in such State or Territory at the time when the alleged crime is charged to have been committed and to have fled therefrom. This is an absolute prerequisite to interstate rendition. The point of personal presence is an important one, as a man can, as just stated, commit any number of crimes and yet remain in his home State and for which he *cannot* be arrested and surrendered as a fugitive from justice. This was the point decided in the case of *Jones v. Leonard*, (1878), *supra*. In *Hartman v. Aveline*, (1878), 63 Ind. 344, 30 Am. Rep. 217; *Wilcox v. Nolze*, (1878), 34 Ohio St. 520; *Tennessee v. Jackson*, (1888), 36 Fed. 258; and *In re Lyon*, (1896), 24 Wash. Law R. (D. C.) 679, the same doctrine was upheld and there is no question as to it being the law. But a person who, being in one State and has thus committed a crime in another State, is certainly not entitled to immunity from the consequences of his crime. Should he afterwards be

found in the State where the crime was committed, he would be amenable to its laws and subject to prosecution.—*Ham v. State*, (1878), 4 Tex. App. 645; *Benson v. Palmer*, (1908), 31 App. Cas. (D. C.) 561.

§ 57. **Unreasonable Conclusion by the Supreme Court.** In *Munsey v. Clough*, (1904), *supra*, affirming the finding of the supreme court of New Hampshire, in *State ex rel. Munsey v. Clough*, (1903), 71 N. H. 594, the Supreme Court of the United States inferentially decided that *habeas corpus* was the proper remedy to test the question whether the accused was a fugitive from justice, with this qualifying explanation:

“But the court will not discharge a defendant arrested under the governor’s warrant where there is merely contradictory evidence on the subject of presence in or absence from the State, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused. As a *prima facie* case existed for the return of the plaintiff in error and she refused to give any evidence upon the return of writ which she had herself sued out, other than the papers before the governor, no case was made out for her discharge, and the judgment of the supreme court of New Hampshire refusing to grant it must, therefore, be affirmed.”

How such a contradictory and unreasonable statement could find its way into a decision of the great court of last resort is beyond comprehension. The first sentence in the quotation just made, clearly and plainly condemns proof of an “alibi,” in *habeas corpus*, to defeat a governor’s warrant of rendition, and in the very next sentence indirectly upholds the right of the fugitive to introduce such testimony in this language, “she refused to give any evidence upon the return of the writ which she herself had sued out.” What evidence could have been offered in her behalf? Only that pertaining to the question of fact—whether or not she was personally present in the demanding State at the time charged when the

alleged crime was committed. If the first proposition as set forth in this quotation were the law of the land the liberty of the citizen, in interstate rendition proceedings, would rest on a very shaky foundation, abrogating that fundamental rule, given by Broom's Maxims, that "there can be no such thing as a conclusive finding or adjudication of fact against a person, depriving him of a valuable right, especially personal liberty, who has not been heard or had an opportunity of being heard."

§ 58. **A Celebrated Case.**—The case which attracted very general attention at the time and caused considerable criticism, because of the prominence of the alleged fugitives in labor circles, was that of Moyer, Pettibone, Haywood and Simpkins, these men were charged with the murder of ex-Gov. Steunnenberg in the State of Idaho, on the thirtieth day of December, 1905. They were each arrested about the same time, in the State of Colorado, on a governor's fugitive warrant, and without any ceremony placed aboard a train and transported to the demanding State, without opportunity to confer with counsel or to invoke the aid of the law in showing that they were not fugitives from the justice of Idaho. When they arrived in the State of Idaho, in charge of the messengers, they were at once placed in the State penitentiary, the county jail being declared insecure, and shortly afterwards petitions for writs of *habeas corpus* were presented for each one of the alleged fugitives, to the supreme court of Idaho, and it was earnestly claimed on their behalf, that, they had been brought into the State unlawfully, by the connivance, conspiracy and fraud on the part of the executive officers of the two States and that neither one of prisoners was a fugitive from justice in the sense of the Federal Constitution and statutes. At the hearing before the supreme court of the State of Idaho, the officers having the accused men in custody moved to strike from the answer and petition of the accused all allegations relating to the manner and method of obtaining their presence within the State. That mo-

tion was sustained and each of the prisoners was remanded.

Subsequently other petitions for writs of *habeas corpus* were filed in the circuit court of the United States, for the district of Idaho, for each of the prisoners, alleging among other things that, "he was not in the State of Idaho on the thirtieth day of December, 1905, nor at any time near that date," and therefore, "is not and was not a fugitive from justice; that he was not present in the State of Idaho when the alleged crime was alleged to have been committed, nor for months prior thereto, nor thereafter, until brought into the State as aforesaid." The Federal circuit court declined to interfere with the arrest, detention and imprisonment of the alleged fugitives. An appeal was taken to the United States Supreme Court and on October 3, 1906, that court in *Pettibone v. Nichols*, (1906), 203 U. S. 192, 51 L. ed. 148, 27 Sup. Ct. 111, with remarkable unanimity affirmed the ruling of the Federal circuit court of Idaho, in the following strong and forceful language:

"The duty of a Federal court, to interfere, on *habeas corpus*, for the protection of one alleged to be restrained of his liberty in violation of the Constitution or laws of the United States must often be controlled by the special circumstances of the case and except in an emergency demanding prompt action, the party held in custody by a State, charged with crime against its laws, will be left to stand his trial in the State court, which, it will be assumed, will enforce, as it has the power to do equally with a Federal court, any right asserted under and secured by the supreme law of the land. And even if the arrest and deportation of one alleged to be a fugitive from justice may have been effected by fraud and connivance arranged between the executive authorities of the demanding and surrendering States so as to deprive him of any opportunity to apply before deportation to a court in the surrendering State for his discharge, and even if on such application to any court, State or Federal, he would have been discharged, he cannot so far as the Con-

stitution or the laws of the United States are concerned—when actually in the demanding State, in the custody of its authorities for trial, and subject to the jurisdiction thereof,—be discharged on *habeas corpus* by the Federal court. It would be improper and inappropriate in the circuit court to inquire as to the motives guiding or controlling the action of the governors of the demanding or surrendering States. No obligation is imposed by the Constitution or laws of the United States on the agent of a demanding State to so time the arrest of one alleged to be a fugitive from justice and so conduct his deportation from the surrendering State as to afford him a convenient opportunity, before some judicial tribunal, sitting in the latter State, upon *habeas corpus* or otherwise, to test the question whether he was a fugitive from justice and as such liable, under the act of Congress, to be conveyed to the demanding State for trial there.”

§ 59. **A Summary of Supreme Court Decisions.**—In *McNichols v. Pease*, (1907), *supra*, the Supreme Court aside from directly passing upon the so-called “alibi” testimony to overcome the *prima facie* showing made by the requisition papers, to defeat the governor’s warrant, also contains a clever and complete summary of principles to be deduced from previous decisions of the court in rendition cases. These principles as enunciated are as follows:

1. **A Fugitive from Justice.**

A person charged with crime against the laws of a State and who flees from justice, that is, after committing the crime, leaves the State, in whatever way or for whatever reason, and is found in another State, may, under the authority of the Constitution and laws of the United States, be brought back to the State in which he stands charged with crime, to be there dealt with according to law. *Robb v. Connolly*, (1884), 111 U. S. 624.

2. Demand for His Arrest and Surrender.

When the executive authority of the State whose laws have been thus violated makes such a demand upon the Executive of the State in which the alleged fugitive is found as is indicated by the above section (5278) of the Revised Statutes—producing at the time of such demand a copy of the indictment, or an affidavit certified as authentic and made before a magistrate charging the person demanded with a crime against the laws of the demanding State—it becomes, under the Constitution and laws of the United States, the duty of the executive of the State where the fugitive is found to cause him to be arrested, surrendered and delivered to the appointed agent of the demanding State, to be taken to that State. *Ex parte Reggel*, (1885), 114 U. S. 642.

3. Proof of Crime and Proof of Flight Essential.

Nevertheless, the executive, upon whom such demand is made, not being authorized by the Constitution and laws of the United States to cause the arrest of one charged with crime in another State unless he is a fugitive from justice, may decline to issue an extradition warrant, unless it is made to appear to him, by competent proof, that the accused is substantially charged with crime against the laws of the demanding State, and is, in fact, a fugitive from the justice of that State. *Roberts v. Reilly*, (1885), 116 U. S. 80.

4. Executive Determination.

Whether the alleged criminal is or is not such fugitive from justice may, so far as the Constitution and laws of the United States are concerned, be determined by the executive upon whom the demand is made in such way as he deems satisfactory, and he is not obliged to demand proof apart from proper requisition papers from the demanding State, that the accused is a fugitive from justice. *Hyatt v. Corkran*, (1903), 188 U. S. 691.

5. *Prima Facie* Case.

If it be determined that the alleged criminal is a fugitive from justice—whether such determination be based upon the requisition and accompanying papers in proper form, or after an original, independent inquiry into the facts—and if a warrant of arrest is issued after such determination, the warrant will be regarded as making a *prima facie* case in favor of the demanding State and as requiring the removal of the alleged criminal to the State in which he stands charged with crime, unless in some appropriate proceeding it is made to appear that he is not a fugitive from the justice of the demanding State. *Munsey v. Clough*, (1904), 196 U. S. 364.

6. Habeas Corpus a Proper Remedy.

A proceeding by *habeas corpus* in a court of competent jurisdiction is appropriate for determining whether the accused is subject, in virtue of the warrant of arrest, to be taken as a fugitive from the justice of the State in which he is found to the State whose laws he is charged with violating. *Pettibone v. Nichols*, (1906), 203 U. S. 192.

7. Legality of Arrest and Detention.

One arrested and held as a fugitive from justice is entitled, of right, upon *habeas corpus*, to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from the justice of the demanding State, and thereby overcoming the presumption to the contrary arising from the face of an extradition warrant. *Appleyard v. Massachusetts*, (1906), 203 U. S. 222.

§ 60. **An Escaped Convict or Person under Parole when a Fugitive.**—A person who is convicted of a crime in a State and is permitted to go at large in that State,

under parole, and who leaves the State before he is released from such parole, is a fugitive from the justice of the State from which he fled, and a certified copy of the record in such criminal case, duly authenticated by the governor of the demanding State, is held to be a sufficient charge of crime to justify his arrest and surrender to the authorities of the demanding State. A person who has been convicted of a crime in a State and escapes therefrom before the expiration of his sentence and is found in another State or Territory, is also a fugitive from the justice of the State from which he fled and may be arrested and returned to the demanding State the same as the person charged with violating his parole. (*Drinkall v. Spiegel*, (1896), 68 Conn. 441, 36 Atl. 832, 36 L. R. A. 488; *Hughes v. Pflanz*, (1905), 138 Fed. 980, 71 C. C. A. 234; *Ex parte Williams*, (1913), 10 Okl. Crim. 344, 136 Pac. 597, 51 L. R. A. (N. S.) 668.)

§ 61. **A Late Decision by the Supreme Court.**—One of the late utterances by the Supreme Court on this subject, is decidedly drawing the line on the fugitive from justice as close as the Constitution and laws of the United States will permit. In *Strassheim v. Daily*, (1910), 221 U. S. 280, 31 Sup. Ct. 558, 55 L. ed. 735, that court reverses Judge K. M. Landis, of the United States district court of the northern district of the State of Illinois, who had previously discharged one Daily, on a writ of *habeas corpus*, on the ground that he was not a fugitive from the justice of the State of Michigan. Daily had been arrested in Chicago on a charge of bribery, brought against him by the authorities of that State. In 1909 Michigan officials determined to install certain new machinery in one of her public institutions, bids were advertised for, and Daily being the best and lowest bidder secured the contract. He went to Michigan before any of the machinery was shipped from Chicago, and while in that State made an agreement with the superintendent that for a certain sum of money old and second-hand machinery was to be accepted for new, and this was done.

Daily was indicted for bribery by a Michigan grand jury but it was claimed by his attorney on the *habeas corpus* hearing before Judge Landis, that no crime was committed in Michigan until the installation of the machinery and Daily not being in that State at or during that time was therefore not a fugitive from justice.

The opinion of the court tightens the grip of the law upon fugitives from justice, holding that "one who does, within the State, an overt act which is, and is intended to be, a material step towards accomplishing a crime, and then absents himself from the State, and does the rest elsewhere, becomes a fugitive from justice, for extradition purposes when the crime is complete, if not before."

§ 62. **The Earlier Cases of Flight.**—In the earlier cases the element of flight, in order to escape detection and punishment, was always prominent in the findings of the courts, in rendition cases. As early as 1837, the judges of the supreme court of the State of Maine, in response to the request of the governor of that State, said: "In our opinion it is the duty of the executive of this State to cause to be delivered over to the agent of another State, at the request of the executive thereof, a citizen of this State, charged by indictment with the fraud before set forth, which being indicted in such State may be presumed to be there regarded as a crime, if the executive of this State is satisfied that such citizen has fled from justice from the State making the demand, and not otherwise."

In *Ex parte Smith*, (1843), 3 McLean, 121, the United States circuit court, sitting at Chicago, Illinois, Judge Nathaniel Pope, presiding, in the course of a very able opinion held that the accused party must have been actually and physically present in the State by which the demand is made and in which the crime is alleged to have been committed, at the time of such commission, and thereafter have fled therefrom.

The United States district court for the western dis-

strict of the State of Michigan, in *In re Jackson*, (1878), 2 Flip. 183, declared that before the executive of one State is authorized to issue his warrant to cause to be arrested and secured a person charged in another State with crime, it should be shown by evidence making a *prima facie* case that such person has fled from the demanding State. This should be shown by competent evidence, as the fact of fleeing lies at the foundation of the right to issue a warrant of rendition. The certificate of the demanding governor is no evidence of the flight of the fugitive. The evidence that the person has fled from justice must not only be satisfactory to the governor, but must be legally sufficient before the executive authority can be exercised.

Mr. Spear, in his "Law of Extradition," speaking of the evidence of flight, says, "this evidence, in respect to both governors, must be legal evidence, not mere hearsay, or suspicion, or mere rumor, and must hence be under oath, and must at least be sufficient to create a *prima facie* case of flight. Without such evidence, it cannot be known to either governor that such a fact exists at all; and until this is reasonably known there is no occasion for any action on the part of either."

§ 63. Rendition of Witnesses.—The brotherly feeling long existing between the original colonies of New England and New York, prior to the establishment of the present system of government, resulted in their entering into a defensive alliance in 1644, and this spirit has been fostered and encouraged, during the intervening years, to such an extent that many reciprocal laws are to be found upon the statute books of Massachusetts, New Hampshire, Vermont, Maine, Pennsylvania, Rhode Island and New York. This feeling of comity and friendship is responsible, no doubt, for the enactment in the States named of a law, similar in every respect in each State, providing for the *rendition of witnesses* in criminal cases, who may have left one of the States named to keep from testifying in a case pending in any court of record and

is found in either one of the other States. It may not have been the intention of the framers of our laws on interstate rendition, to include absconding witnesses in criminal cases as fugitives from justice; nevertheless, it must be conceded that such an interpretation would greatly facilitate the administration of justice throughout the land. The statute as it stands in New York under section 618a of the Code of Criminal Procedure, and passed by the legislature in 1902, reads as follows:

“If a judge of a court of record in any State bordering on this State which by its laws has heretofore made provision for commanding persons within its borders to attend and testify in criminal actions in this State, certifies under the seal of such court that there is a criminal action pending in such court, wherein the defendant is charged with a crime of the grade of a felony, and that a person residing or being within this State is believed to be a material and necessary witness in such action, a judge of a court of record in this State, upon the presentation of such certificate and such proof of the materiality and necessity of such witness as he may require, opportunity being given such witness to appear before such judge and be heard in opposition thereto, and upon request so to do by the clerk of the court issuing such certificate a subpoena commanding such witness to appear and testify in the court where such criminal action is pending at the time and place to be stated therein. If any person on whom such subpoena has been served in the manner provided by this chapter, having been tendered by the party asking for the subpoena the sum of ten cents for each mile to be traveled to and from such court, and the sum of five dollars for each day that his attendance is required, the number of days to be specified in the subpoena, shall unreasonably neglect to attend and testify at such court, he shall be punished in the manner provided for the punishment of disobedience of any other subpoena issued from a clerk, of a court of record in this State, provided, however, that the laws of the State in which the trial is to be held gives to persons coming in the State under such sub-

poena, protection from the service of papers and arrest.”

In 1911 an application was made to a justice of the supreme court, sitting at special term in New York City, for an order for the issuance of a subpoena requiring one Rembrandt Beale, a person within the State of New York, to appear and testify in a criminal action pending in the State of Massachusetts. The motion was denied by the justice because of the supposed invalidity of the statute for constitutional reasons. See *Commonwealth of Massachusetts v. Klaus*, (1911), 129 N. Y. Supp. 1117. An appeal was taken to the appellate division, first department, supreme court of New York and the statute was fiercely assailed by counsel representing the recalcitrant witness but the court reversed the order of the special term and upheld the constitutionality of the statute in every respect. See *Commonwealth of Massachusetts v. Klaus*, (1911), 145 App. D. 798, 130 N. Y. Supp. 713.

CHAPTER VIII.

THE REQUISITION.

- § 64. The Demand and its Requisites.
- § 65. The Rule as Fixed by the Supreme Court.
- § 66. Executive Discretion.
- § 67. Authority of Governor of Asylum State.
- § 68. Review by Courts of Governor's Finding.
- § 69. The Requisition Must Be Accompanied with Other Papers.
- § 70. Authority of States Involved.
- § 71. A Requisition Based on Forgery.
- § 72. State Fees and Regulations.

- 1. Alabama.
- 2. Arizona.
- 3. Arkansas.
- 4. California.
- 5. Colorado.
- 6. Connecticut.
- 7. Delaware.
- 8. Florida.
- 9. Georgia.
- 10. Idaho.
- 11. Illinois.
- 12. Indiana.
- 13. Iowa.
- 14. Kansas.
- 15. Kentucky.
- 16. Louisiana.
- 17. Maine.
- 18. Maryland.
- 19. Massachusetts.
- 20. Michigan.
- 21. Minnesota.
- 22. Mississippi.
- 23. Missouri.
- 24. Montana.
- 25. Nebraska.
- 26. New Hampshire.
- 27. New Jersey.
- 28. New Mexico.

29. Nevada.
30. New York.
31. North Carolina.
32. North Dakota.
33. Ohio.
34. Oklahoma.
35. Oregon.
36. Pennsylvania.
37. Rhode Island.
38. South Carolina.
39. South Dakota.
40. Tennessee.
41. Texas.
42. Utah.
43. Vermont.
44. Virginia.
45. Washington.
46. West Virginia.
47. Wisconsin.
48. Wyoming.
49. District of Columbia.
50. Alaska, Territory of.
51. Hawaii, Territory of.
52. Porto Rico.
53. Philippine Islands.

§ 64. **The Demand and its Requisites.**—The requisition is the formal and official demand of the executive authority of the State, where the crime is committed, and from which the fugitive criminal has fled, directed to the governor of the State where such fugitive is found, requesting him to cause his arrest and detention, with the ultimate view of his surrender and deportation to the demanding State, where he is to be arraigned and tried for the crime committed. The requisition itself is predicated upon a petition by the prosecuting attorney of the county, wherein the crime is alleged to have been committed, accompanied by a specific charge of crime, in the form of an indictment found by a grand jury, or an affidavit made before a magistrate, together with certain and positive proof, showing that the accused was personally present in the demanding State, on the day and date when the crime was committed, and that he has

been found in the asylum State, and is therefore, a fugitive from the justice of the State making the demand. The act of Congress requires of the executive making the demand, to furnish evidence of the charge, *not to make the charge*: and on that to make the demand. He is not only to see that a charge of crime has been made in conformity with the act of Congress, but he is to show that the evidence has been furnished him—and this evidence is to be of such a character as to satisfy the mind, that the party has been legally charged in the courts of the State whence he fled, with the crime for which it is sought to apprehend him.

§ 65. **The Rule as Fixed by the Supreme Court.**—In *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544, the Supreme Court of the United States, in passing upon the right of a governor to honor a requisition and issue his warrant thereon, laid down the following mandatory rule for the guidance of the executive authority of the several States:

“It must appear, therefore, to the governor of a State to whom such demand is presented, before he can lawfully comply with it: First, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled by an indictment or an affidavit, certified as authentic by the governor of the State making the demand; and, second, that the person demanded is a fugitive from the justice of the State the executive authority of which makes the demand. The first of these prerequisites is a question of law and is always open upon the face of the papers to judicial inquiry on an application for a writ of *habeas corpus*.”

§ 66. **Executive Discretion.**—Upon the governor of the demanding State rests the responsibility for the commencement of rendition proceedings. He alone has the legal right to determine, after examining the petition or application of the prosecuting attorney and the accompanying documents, whether or not he will set in

motion the machinery of the law for the arrest and return of the fugitive criminal, by the issuance of a requisition directed to the executive of the asylum State. That determination, however, must be based upon the fact that every essential requirement of the Federal law, relating to interstate rendition, has been complied with, unless this is manifest from the papers before him, he is wholly *without* jurisdiction to act. Should a requisition be issued on defective and insufficient papers, creates no obligation whatever upon the governor of the asylum State, to honor the demand for the arrest and detention of the alleged fugitive. The jurisdiction to issue a warrant of rendition by the executive of the State where the fugitive is found, is derived solely from the regularity and legality of the requisition and papers from the governor of the State making the demand. It will be observed that the action of the executive of the demanding State, in issuing or refusing a requisition, is purely a matter left to his own discretion and no power can be brought to bear upon him to force him to do or not to do that particular thing.

§ 67. **Authority of Governor of Asylum State.**—The governor of the asylum State is also clothed with the authority to pass upon the legality and the sufficiency of the requisition and accompanying papers from the demanding State, and also determine for himself as to whether or not he will issue his warrant of rendition for the arrest and deportation of the alleged fugitive. Do the requisition and accompanying papers, from the demanding State, create such a legal demand as is contemplated by the Constitution of the United States and the act of Congress pertaining to this subject? And can it be truly said that the requisition and documents meet all the requirements of that law? If after a careful examination of all the papers by the governor of the asylum State and these questions are answered in the affirmative, then such governor is in duty bound to comply with the requisition from the demanding State. The

duty of surrendering fugitive criminals on the part of the States, it would seem from the use of the word "shall" in the clause of the Constitution, relating to interstate rendition, is absolutely compulsory. And yet there being no power lodged in the United States to compel the execution by the States of that clause, the obligation imposed is apparently one of discretion and duty so far as the United States is concerned. (Kentucky v. Dennison, (1860), 24 How. 66, 16 L. ed. 717.) However, some of the individual States have passed local statutes which, in effect, make the constitutional provision binding and free from all discretion, upon their officers, who are charged with the execution of the same, and this in a large measure has resulted in less friction between the States, caused by disagreements from the failure to honor requisitions.

§ 68. Review by Courts of Governors' Finding.—Whatever action the executive of the demanding State may take, regarding the issuance or non-issuance of a requisition for a fugitive criminal, as already stated, the courts of that State have no authority to review his finding nor to control his judgment, in the performance of this particular duty. While this is the law as to the demanding executive, on the other hand, if the governor of the asylum State, decides to honor the requisition and orders the issuance of his warrant of rendition, his finding is subject to review by the courts of his State on *habeas corpus*; and should it appear that the charge of crime is not substantially made, or that the person arrested is not in fact a fugitive from the justice of the demanding State, then in either event, the governor's warrant may be declared void and the alleged fugitive discharged. In the case of *Ex parte Smith*, (1842), 3 McLean, 121, the Federal judge at Chicago, Illinois, declared the governor's warrant void and ordered the discharge of Smith because the affidavit failed to charge a crime under the statutes of Missouri, the demanding State. This was one of the earliest cases to review the

action of the governor in honoring a requisition from a sister State and is often cited as a ruling case.

§ 69. **The Requisition Must Be Accompanied with Other Papers.**—The requisition, though indispensable, if not accompanied by the proper papers, has no legal force whatever. The governor to whom it is addressed has the right to know on what basis and for what reasons the demand for the arrest and deportation of the fugitive is asked, and for this purpose it is not enough that the demanding governor has simply made a statement of facts, unless that statement is accompanied with documentary evidence showing it to be true, it is of no effect. The statements by themselves in the requisition prove nothing, and are absolutely of no value whatever. In reviewing this proposition in *Ex parte Thornton*, (1863), 9 Texas, 635, it was so held by the supreme court of Texas, and in *Hartman v. Aveline*, (1878), 63 Ind. 344, the supreme court of Indiana held practically the same. In the case of *In re Doo Woon*, (1883), 18 Fed. 898, the Federal district court of the State of Oregon, discharged the relator as a fugitive upon the ground that no indictment or affidavit accompanied the requisition. In a rendition case in New York, in *In re Rutter*, (1869), 7 Abb. Pr. (N. S.) 67, it was shown from the return of the respondent, to the writ of *habeas corpus*, that the alleged fugitive was held by the governor's warrant and this alone was based on simply the requisition, it was accompanied by no other papers. The court held that "the mere requisition of the governor of the State of Tennessee, of itself, and without more affords no authority or justification for the arrest and detention of the alleged fugitive." The supreme court of the State of Ohio, in *Work v. Corrington*, (1877), 34 Ohio St. 64, held that, "if the governor of one State makes a requisition on the governor of another State for the surrender of a fugitive from justice, and the case is shown to be within the provisions of the Constitution of the United States and the act of Congress on the subject, no discretion is vested

in the latter governor, but it is his imperative duty to issue his warrant of extradition." See also *State v. Currie*, (1911), 174 Ala. 1, 56 So. 735; *Ex parte Faihtinger*, (1914), — Tex. Crim. App. —, 163 S. W. 441; *Ex parte Walters*, (1914), 106 Miss. 439, 64 So. 2.

§ 70. Authority of States Involved.—In every case of interstate rendition it is evident that only two sovereign States—each independent of the other and each acting through its supreme executive authority—is involved. No other State has any interest or concern and the General Government is without power to interpose in behalf of any State, or any person in interstate rendition. The State wherein the fugitive is found is unable to try and punish him because he has violated none of its laws, *State v. Cutshall*, (1892), 110 N. C. 536, 15 S. E. 261, and the State against whose laws he has committed an offense, is also powerless to try and punish him, because he is corporally beyond the jurisdiction of its court. It therefore becomes necessary for the latter State to make requisition for the arrest and surrender of the fugitive criminal, directed to the governor of the asylum State, in order that the required custody may be obtained of his person, and that he may be returned to the demanding State, and there tried for the crime he is charged with having committed.

§ 71. A Requisition Based on Forgery.—Illinois alone, so far as a close search discloses, is the only State to furnish an instance of a governor's requisition being issued upon a *forged* request or petition from the prosecuting attorney. In 1889 one Langdon, a citizen of Kankakee county, Illinois, went before a justice of the peace and made an affidavit against his former housekeeper, charging her with larceny as bailee and a warrant for her arrest was duly issued and after diligent search and inquiry it was ascertained that she had fled the State of Illinois and was living in the State of Arkansas. Langdon, the complaining witness, went before the grand jury and asked for her indictment but for some reason or

other a "no bill" was returned. Langdon then requested the State's attorney of Kankakee county to prepare and present to the governor of Illinois a petition for a requisition, on the governor of the State of Arkansas, asking for her arrest and surrender as a fugitive from justice. The State's attorney refused this request. Then it was that Langdon, not to be outdone, employed an attorney both in Kankakee, Illinois, and in the State of Arkansas and ultimately the governor of Illinois issued a requisition on the governor of Arkansas and the latter honored the same and issued his warrant for the arrest and deportation of the alleged fugitive from justice. Langdon, the prosecutor, was made the messenger of the State of Illinois, and made one or two trips to Arkansas but the alleged fugitive eluded arrest and fled from that State. About this time it was discovered that the State's attorney's name and the name of the county judge of Kankakee county, had been forged to the petition for requisition sent to the governor of Illinois. The requisition was recalled and cancelled. Langdon was indicted in Kankakee county for forgery, tried, convicted and sentenced to the penitentiary, in the face of the fact that his attorney pleaded insanity. Surely no one but an insane man would have attempted such a scheme. See *Langdon v. People*, (1890), 133 Ill. 383, 24 N. E. 874.

§ 72. State Fees and Regulations.—Many of the States of the Union have adopted certain specific rules for the guidance of the executive in issuing requisitions and a strict compliance with the same is required before the official demand for the arrest and surrender of the alleged fugitive from justice is made. Several years ago an effort at uniformity of such regulations was attempted by the governors of the several States, resulting in the adoption of a code of rules, which greatly facilitated and simplified the arrest and surrender of fleeing criminals and thereby producing a spirit of co-operation between the States so far as the rendition of fugitives from justice were concerned. A knowledge of these regulations

is essential to a thorough understanding of the practice in the several States and Territories relating to the rendition of fugitives from justice—hence their insertion.

1. Alabama.

No fee is charged in Alabama for the original requisition or for honoring an outside requisition. The rules are as follows:

Application for a demand by the governor of this State upon the governor of any other State for the extradition of a fugitive from justice of this State, must clearly and succinctly set forth:—1. The name of the person to be demanded. 2. The offense with which he is charged. 3. The county in which the offense is laid. 4. The State to which the accused has escaped. 5. *The name of a suitable person to be commissioned as the agent of this State in the extradition, and without special and satisfactory reason therefor, no person will be appointed and commissioned as such agent, in any case, who has a personal or private interest in the apprehension of the fugitive, or who has a strong motive for making any adjustment, settlement, or compromise with him by which the object of the requisition would be defeated.*

The application must come from, or be approved by, the solicitor of the circuit or his representative in the county, giving his opinion whether or not a conviction will be secured if fugitive is brought back; and it must aver, under oath, that the accused person has fled the State, that the ends of justice require that he be brought to trial, and that the process will not be used to collect a debt or to enforce a claim, but for the punishment of crime.

The State will not pay the expenses of bringing fugitives to justice unless some public good is to be subserved thereby, and will not in any case pay the expenses of a guard unless specially authorized by the governor in advance.

With the application, there must be filed here two certified copies of an indictment, or, if no indictment has

been found, two certified copies of an affidavit made before a magistrate of competent jurisdiction, charging the person to be extradited with having committed treason, felony or other crime—one copy to be retained in this department, the other to be attached to and made part of the requisition.

2. Arizona.

No fee and no rules or special regulations.

3. Arkansas.

Fee \$2, no regulations.

4. California.

No fee. Regulations as follows:

The application for the requisition must be made by the district or prosecuting attorney for the county or district in which the offense was committed, and must be in duplicate original papers or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney:

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled, in capital letters, for example: John Doe.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable to the particular statute defining and punishing the same.

(i) If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretenses, embezzlement or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit, of facts and circumstances satisfying the executive that the alleged criminal has fled from the justice of the State, and is in the State on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies in duplicate must accompany the application.

4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant, must be duly certified.

6. Upon the renewal of an application, for example: On the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or certified copies of the papers in conformity with the above rules must be furnished.

7. In the case of any person who has been convicted of any crime and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive, except in compliance with these rules.

5. Colorado.

Fee \$5. Rules of practice same as California.

6. Connecticut.

No fee. No rules.

7. Delaware.

Fee \$2. No rules.

8. Florida.

No fee. No rules.

9. Georgia.

No fee. No rules.

10. Idaho.

Fee \$5. No rules.

11. Illinois.

Fee \$3. No rules.

12. Indiana.

Fee \$3. No rules.

13. Iowa.

Fee \$2. All papers must be in duplicate and applications must be made by county attorney. Rules of practice as follows:

When the application is based upon indictment the application must be accompanied by duly attested copies of the indictment.

When application is based upon information the application must be accompanied by certified copies of the information and warrant of arrest certified to by the magistrate, and a certificate from the clerk of courts as to the official character of the magistrate and the genuineness of his signature; and such information must be supported and accompanied by affidavit or affidavits, sworn to before the *magistrate* (a Notary Public is not a magistrate within the meaning of the statute) by some person or persons having knowledge, setting forth the details of the commission of the crime.

In *all* cases of fraud, false pretenses, embezzlement or forgery, the affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, should accompany the application, whether based on indictment or information.

An affidavit should also accompany the application even though based on indictment where requisition is made upon the State of Pennsylvania and the crime of seduction.

If there has been any former application for a requisition for the same person, growing out of the same transaction, it should be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

If the offense charged is not of recent occurrence a satisfactory reason should be given for the delay in making the application.

14. Kansas.

No fee. No rules.

15. Kentucky.

Fee \$4. No special rules or regulations.

16. Louisiana.

Fee \$2. No rules whatever.

17. Maine.

No fee. Same rules as California.

18. Maryland.

No fee. Rules and regulations as follows:

To avoid the frequent irregularities and denials consequent from defects in applications to the governor for requisitions for the surrender of fugitives from justice, the following rules, which have been substantially promulgated and enforced by the preceding executives, will be strictly adhered to; and any application not complying with them in all respects will be rejected, without inquiry into its intrinsic merits.

The application must in all cases be made by the *state's attorney*, and must state that the party complained of is a *fugitive from justice*, having fled from this

State before arrest could be made, and that the ends of justice require that he should be brought back for trial.

If the application is made upon an indictment, a certified copy thereof must be furnished by the clerk of the court in which it was found.

In cases where no indictment has been found, the affidavits charging the offense upon the accused must be in such express terms as to justify the belief that the grand jury, if in session, would be fully authorized to find a true bill; the justice of the peace taking the affidavits must certify that in his opinion the parties making them are entitled to full credit, and that they present a proper case for a requisition; and the official character of the Justice must be duly attested by the certificate of the clerk of the court.

The state's attorney must further certify that if the facts stated in the affidavit are true, they would in his opinion result in a conviction. He must also name the State (or District of Columbia) upon which the requisition is asked, and a *proper officer* be authorized as agent of the State to take charge of the prisoner.

If the offense is not of recent occurrence, sufficient reason must be given why the application has been delayed; and if a prior application has been made and refused, any new facts appearing in the papers must be specially pointed out.

Application for the extradition of criminals who have committed trifling offenses will not be encouraged.

In all cases of rejected applications the papers will be retained in this office, and if a requisition shall have been improperly or unadvisedly granted, there will be no hesitation in revoking it.

In all cases of *false pretenses, embezzlement, conspiracy, and crimes of like character*, no requisition will be granted unless a certified copy of the indictment accompanies the application, or unless the evidence exhibited clearly and unequivocally establishes the fact that the object is not to collect a private debt.

In executing a requisition the sheriff will be allowed

a fair compensation for his services, and in no case will the expenses of an assistant be paid except where there are more prisoners than one, and then only when the necessity for assistance is made apparent. The amount allowed the officer will be \$3 per diem for the time necessarily employed, and the actual traveling expenses of himself and prisoner; and in all cases the bill of expenses shall set forth the items, be verified by the affidavit of the officer, and accompanied by the proper vouchers.

As applications for requisitions may be sent in the mails with equal safety and effect, no expenses for transportation to and from Annapolis will be allowed.

The state's attorney must state explicitly the locality where the fugitive is known to be, and in no case will a requisition be granted at the same time for the same offender, upon the governor of more than a single State.

Duplicates of all papers necessary upon the application must be furnished, that one set may be retained in the department and the other attached to the requisition, though but one set need be certified.

19. Massachusetts.

No fee. Rules same as California.

20. Michigan.

Fee \$2. Rules same as California with this addition: "Substantially the same showing will be required in applications received from the governors of other States for the extradition from this State of persons charged with crime."

21. Minnesota.

Fee \$5. Rules of practice same as California.

22. Mississippi.

No fee. No rules.

23. Missouri.

Fee \$1. No rules.

24. Montana.

Fee \$5. No rules.

25. Nebraska.

Fee \$2. Rules same as California.

26. Nevada.

No fee. No rules.

27. New Hampshire.

No fee. Rules same as California.

28. New Jersey.

No fee. No rules.

29. New Mexico.

Fee \$3. Rules same as California.

30. New York.

No fee. Rules same as California.

31. North Carolina.

Fee \$3. Rules same as California.

32. North Dakota.

Fee \$3. No rules.

33. Ohio.

Fee \$5. Rules of practice as follows:

1. Applications must be made by the prosecuting attorney, except in cases of convicts escaped from the Penitentiary.

2. The statutes of Ohio provide for requisitions in cases of felony only; but the governor may issue extradition warrants without regard to our classification of offenses.

3. Applications and accompanying papers must be in duplicate.

4. The prosecuting attorney must designate a person to be appointed agent. As a rule, the sheriff should be designated; and whoever the person may be, he should be instructed not to permit a compromise of the case under any circumstances.

5. The employment of the extradition process as a means of collecting debts, in cases of real or assumed false pretense, is so general that a proper use of it is a rare exception. Creditors invoke the process with no other purpose in view. This abuse has been carried to such an extent that the governors of the several states feel the necessity of putting an end to it; and even the refusal to either demand or surrender fugitives so charged has been suggested as the only sure remedy. prosecuting attorneys, will, therefore, notify persons who request them to make application in cases of this kind, that the governor will not issue a requisition unless convinced that the sole intention is to prosecute the alleged fugitives for the offense charged.

6. Every application must be accompanied by the affidavit required by statute, as to the purpose for which the extradition of the fugitive is desired. It should be made by the prosecuting attorney, because the prosecution is under his control. In all cases of *fraud*, *false pretenses*, *embezzlement*, or *forgery*, however, the affidavit of the principal complaining witness that the application is made in good faith, etc., will also be required, or a sufficient reason be given for the absence of such affidavit. These affidavits are printed on the same sheet with the blank application, and should be made before the clerk of court, to facilitate authentication by the governor, as he can make one certificate cover the whole case.

7. If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application. (See paragraph 16.)

8. Requisitions will be issued only upon the condition that no portion of the expense pertaining to the extradition shall be paid by the State.

9. Requisitions will be recalled, and warrants re-

voked, when it is discovered that fraud or deception has been practiced.

10. When the application is based upon an indictment, the only papers required are the application, copy of indictment duly authenticated, and affidavit mentioned in the 6th paragraph—all in duplicate.

11. When based upon a complaint, duplicate copies of the instrument, certified and authenticated as specified in paragraph 15 and 18, and affidavits (in duplicate) specified in paragraphs 6 and 14, must accompany the application.

12. Although mayors and police judges are magistrates, under the statutes of Ohio, complaints upon which requisitions are to be made should be made before *justices of the peace only*, because (1) justices are recognized everywhere *without question*, as magistrates, and because (2) this is essential to a due authentication—neither the governor nor clerks of courts of common pleas having official knowledge of the election and qualification of mayors and police judges.

13. In some counties, the practice of making affidavits before notaries public, and filing them with justices of the peace, as complaints, prevails. This is certainly not based upon a correct interpretation of the statutes of Ohio; and besides, the statutes of the United States, which govern in the matter of extradition, provide that complaints *shall be made before a magistrate*.

14. The statute requires, in case of complaint, “an affidavit or affidavits, to the facts constituting the offense charged, by persons having actual knowledge thereof.” The meaning of this is, *that an affidavit or affidavits giving in detail all known facts and circumstances having a bearing upon a case*, shall be furnished, in support of and to strengthen the complaint, which, generally and properly, is simply a brief statement, charging the offense, and by whom, when, where, and by what means it was committed. If no person other than the complainant possesses the necessary information, there can, of course,

be but one such affidavit. These affidavits to be *originals* and in *duplicate*.

15. The copies of the complaint which accompany the application must be certified by the justice of the peace before whom the complaint was made, to be true copies of the original instrument on file in his office. Sometimes the original complaint is taken in triplicate, and two of them transmitted with the application, under the mistaken notion that they are better than copies; but the statute requires *certified copies*.

16. An application based upon a complaint, when there has been a session of the grand jury after the commission of the offense, and an opportunity afforded thereby to procure an indictment, will be regarded with disfavor, and a satisfactory explanation of the failure to procure an indictment will be required.

17. In case of indictment, the clerk of court must make duplicate copies of the instrument, and certify, under his official seal, that each is a true copy of the original indictment on file in his office.

18. In case of complaint, the clerk of court must attach to each copy of the instrument, following the certificate of the justice of the peace, the usual certificate as to the election, qualifications, etc., of that office. This must not be omitted upon the theory that such certificate can be made by the governor or secretary of state, as the statute (Vol. 80, O. L., p. 186) provides that "no officer other than the clerk of court of common pleas shall certify to the signature and qualification of justices of the peace."

19. The certificates referred to in the last two paragraphs should, invariably, *be signed by the clerk himself*, as the papers must receive a final authentication by the governor, who has no official knowledge of the appointment of deputies. Although the clerk's seal imports verity, and is, therefore, for general purposes, a sufficient verification when used by the deputy, the governor, in a case where a deputy signs the name of the clerk, can certify only as to the statutory authority of

deputies, and that the principal is clerk; but in such case, or where a deputy makes the certificate himself, he cannot certify that such person is deputy clerk. *Extradition papers undergo the scrutiny of able lawyers, especially when the surrender of a fugitive is resisted; and opportunity must not be afforded them to defeat or delay justice, and cause unnecessary expense, upon a claim of insufficiency in any respect.*

20. Fugitive criminals from other States sometimes avoid arrest, after they are discovered, or secure their release, after arrest, because of delay in obtaining a requisition. Such escape or release may be prevented by proceedings under sections 7156, 7157 and 7158 of the Revised Statutes of Ohio.

21. Upon the renewal of an application, for example: On the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or certified copies of papers, in conformity with the above rules must be furnished.

22. The sections of the Revised Statutes of Ohio relating to the extradition of fugitives are 95, 96, 97, 7156, 7157 and 7158. Section 95 has been amended since the revision of the Statutes, and will be found in Vol. 81, O. L., page 23. Also, see Vol. 81, O. L., page 208.

34. Oklahoma.

Fee \$2.50. Rules same as California.

35. Oregon.

Fee \$3. The rules of practice are as follows:

An application to the governor of this State for a requisition upon the governor of another State or Territory, for the rendition of an alleged fugitive, *must*, if the person whose extradition is sought has been indicted, *be accompanied by the following documents, in duplicate:*

1. A duly attested copy of the indictment made by the clerk of the court having jurisdiction to try the party charged.

2. An affidavit or affidavits that the party charged is

a fugitive from justice and that the demand is made in good faith, for the punishment of crime, and not for the purpose of collecting a debt, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with a civil process, or for any pecuniary or private end.

In case no indictment has been presented, and the application is based upon an information or complaint made before an examining court or magistrate, such application *must be accompanied by the following documents in duplicate*:

1. A duly attested copy by the examining magistrate of the information or complaint filed with him.

2. An affidavit or affidavits, as specified in paragraph 2, above.

3. An affidavit or affidavits, to the facts constituting the offense charged, by persons having actual knowledge thereof.

4. A certificate from the magistrate before whom the complaint was made that, in his opinion, the character of the complaint and the merits of the case presented, warrant the application.

Each application must be accompanied also by *duplicate certificates of the district attorney* (or deputy) of the district in which the offense is alleged to have been committed, showing all the material circumstances, together with his opinion upon the expediency of allowing the application; also by *duplicate certificates* of the county clerk, showing the official character of the magistrate before whom the complaint was made. When application is made by a deputy district attorney, there should be a certificate of the county clerk as to the official character of said deputy.

In all cases the greatest care will be exercised by this department to ascertain beyond a doubt that the object in seeking a requisition is not to collect a debt, nor to answer any other private end.

In all cases of false pretense, embezzlement, conspiracy, and similar crimes, the strongest affirmative evi-

dence will be required to show that the real object is not the collection of a private debt.

If the offense is not of recent occurrence, sufficient reason must be given why the application has been delayed.

Requisitions will not be granted upon two or more States at the same time for the rendition of the same person.

In all cases of rejected applications the papers will be retained in this department.

In making application for a requisition, a suitable person should be recommended for state agent to receive and return the fugitive.

36. Pennsylvania.

Fee \$1. Rules same as California.

37. Rhode Island.

No fee. The following rules have been established for issuing requisitions upon the executive authority of any other State or Territory, and for issuing warrants upon requisitions from such executive authority, for the apprehension of fugitives from justice:

Every application to the governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this State, must be in writing, and must be accompanied by the following documents and proofs:—

1. A duly attested copy of the indictment, if the indictment has been found against the offender.

2. If no indictment has been found, then the application must be accompanied by a duly attested copy of the complaint, made before a court or magistrate authorized to receive the same. And if a copy of a complaint is presented, such copy must be accompanied by affidavits to the facts constituting the offense charged.

3. There must in every case be sworn evidence that the person charged is a fugitive from justice; that is, that he has fled from the State to avoid arrest.

The copy of the indictment or complaint should be attested by the clerk or a justice of the court or by the magistrate.

If no indictment has been found, and a copy of a complaint is presented, the affidavits to support thereof must be sufficient to establish a *prima facie* case—such as would justify a grand jury in finding an indictment.

The affidavits to show that the person charged is a fugitive from justice should show, as particularly as may be, the time and circumstances of his flight, and in what State or Territory he now is.

If the offense was not of recent occurrence, sufficient reasons must be given why the application has been delayed.

All cases should be first submitted to the attorney general or the assistant attorney general and his recommendation as to the issuance of a requisition and the proper agent to be appointed should be secured.

The governor in his discretion, will require evidence of the character of the persons taking the affidavits.

The purpose in granting requisitions is to aid in the administration of the criminal law. No requisition will be issued in any case to aid in collecting a debt or enforcing a civil remedy against a person who has left the State. In all cases where indictments have not been found and where the conduct of the prosecution is not in the hands of the law officers of the State, it must be made to appear that the application for a requisition is made in good faith, not for any private ends, but with a view to enforce the charge of crime against the offender. This rule will be applied with especial strictness in all cases of cheating, obtaining money by false pretenses, embezzlement, forgery, and the like.

The governor has no power to require the surrender of fugitives who have taken refuge in the British Provinces, or other foreign dominions.

Duplicates of all papers furnished to the governor will be required, in order that one set may be retained here, and the other attached to the requisition.

The governor of this State will deliver over to the executive of any other State or Territory, persons charged therein with crime, only when the demand is accompanied by the same documents and proofs which are mentioned above, in paragraphs 1, 2 and 3. He will require satisfactory evidence that the only object of the requisition is to punish the criminal, and that the process is not sought for the purpose of enforcing a civil remedy.

38. South Carolina.

No fee. No rules.

39. South Dakota.

Fee \$3. No rules.

40. Tennessee.

Fee \$5. No rules.

41. Texas.

Fee \$2. No rules.

42. Utah.

No fee. No rules.

43. Vermont.

No fee. Rules are as follows:

Application must be made by the state's attorney of the county in which the offense was committed, and must be in duplicate original papers, except indictments, which must be certified copies, also in duplicate.

The following must appear from the certificate of the state's attorney.

1. The *full* name of the person for whom extradition is asked, together with the full name of the agent proposed, the same to be accurately spelled and *plainly* written.

2. That in his opinion, the ends of public justice require that the **alleged criminal** be brought to this State for trial.

3. That he believes that he has sufficient evidence to secure a conviction of the fugitive, and that he is familiar with the facts, circumstances and proof relating to the alleged crime.

4. That the person named as agent is a proper person, naming his official position, and that he has no *interest* in the arrest of the fugitive.

5. If there has been a former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such former application, as near as may be.

6. If the fugitive is known to be under either civil or criminal arrest, the fact of such arrest, and the nature of the proceedings upon which it is based, must be stated.

7. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any such purpose.

8. That all papers in duplicate have been compared with each other, and are in all respects exact counterparts.

9. Whether the offense charged is felony or a misdemeanor, with a concise definition thereof, and a particular reference to the Statute, giving the Section, together with any amendments of the law in question, and stating the punishment for the alleged crime.

10. When more than one year has elapsed since the commission of the crime, a full explanation of the delay must be given; and when no indictment has been found, the reason why must be stated. If the matter has been before, or considered by, the grand jury of the county, and a bill not found, this fact must be so stated. If the matter has been before, or considered by, the grand jury of the county and a bill found, this fact must be stated.

a. Proof by affidavit of *facts* and *circumstances* satisfying the executive that the alleged criminal has fled from the justice of this State, and is in the State on

whose executive the demand is requested to be made, must be furnished. No mere unsupported allegations will be received or accepted as conclusive on this point. In addition to the *facts* and *circumstances* required it must appear affirmatively what the *occupation* of the accused at the time of the flight was; whether he was a *resident*, or only in this State transiently; whether he was *married*; when the alleged fugitive left the State, and in general the previous history of the accused so far as it can be ascertained, and whether he is in the surrendering State transiently, or making it his residence, and his occupation therein that the *reasons* of the affiant for his belief that the accused is a fugitive from justice may be before the executive for his consideration. As to all affidavits not made by the state's attorney, or some public officer, the state's attorney must certify that the affiant is a respectable person and entitled to credit.

b. If an indictment has been found, certified copies in duplicate must accompany the application.

c. If an indictment has not been found, the *facts* and *circumstances* showing the commission of the crime charged, *and that the accused perpetrated the same*, must be shown by affidavit or deposition. No application will be considered based on an *information* or *complaint*, and not properly supported by affidavits. Conclusions will not be considered except in connection with the facts and circumstances from which they are drawn.

d. If the crime of forgery is charged, an affidavit of the person whose name is alleged to have been forged must be furnished, or its absence satisfactorily explained.

e. Applications will not be considered unless it affirmatively appears that the alleged fugitive was in this State at the time of the commission of the offense. *Constructive* crime is not within the extradition law.

f. The official character of the officer taking depositions or affidavits, or administering oaths, or signing or issuing warrants must be duly certified.

g. The state's attorney asking a requisition must within three months, unless sooner requested, after it is

issued, make report to the executive of all proceedings had thereunder.

h. Upon the renewal of an application, for example: on the ground that the fugitive has fled to another State, not having been found in the State upon the executive of which the first was granted, new papers in conformity with the foregoing regulations must be furnished.

44. Virginia.

Fee \$4. Rules same as California.

45. Washington.

Fee \$2. No rules.

46. West Virginia.

Fee \$2. The rules are as follows:

The laws of West Virginia concerning this subject will be found in Chap. 14 of the Code.

All Papers Must be in Duplicate.

1. Applications must be made by the prosecuting attorney. See blanks. "Application of Prosecuting Attorney," and "Affidavit of Prosecuting Attorney." In case of a person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff, warden of the penitentiary, or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction, and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape, and the circumstances attending the same.

2. Applications and all accompanying papers must be in duplicate.

3. The prosecuting attorney must designate a person to be appointed agent. As a rule, the sheriff should be designated; and whoever the person may be, he should be instructed not to permit a compromise of the case under any circumstances.

4. The employment of the extradition process as a

means of collecting debts, in cases of real or assumed false pretense, is so general that a proper use of it is a rare exception. Creditors invoke the process with no other purpose in view. This abuse has been carried to such an extent that the governors of the several States feel the necessity of putting an end to it; and even the refusal to either demand or surrender fugitives so charged has been suggested as the only sure remedy. Prosecuting attorneys will, therefore, notify persons who request them to make application in cases of this kind, that the governor will not issue a requisition unless convinced that the sole intention is to prosecute the alleged fugitives for the offense charged.

5. Every application must be accompanied by the affidavit required by statute, as to the purpose for which the extradition of the fugitive is desired. (See blank, "Affidavit of Prosecuting Attorney.")

It should be made by the prosecuting attorney, because the prosecution is under his control. In all cases of fraud, false pretenses, embezzlement, or forgery, however, the affidavit of the principal complaining witness that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason be given for the absence of such affidavit. These affidavits should be made before the clerk of the court (county or circuit), and certified under the seal of the court.

6. If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application. (See paragraph 13.)

7. When the application is based upon an *indictment*, the only papers required are the application, copy of indictment duly authenticated, and affidavit mentioned in the 5th paragraph—all in duplicate.

8. When based upon a *complaint*, duplicate copies of the instrument, certified and authenticated as specified

in paragraphs 12 and 15, and affidavits (in duplicate) specified in paragraphs 5 and 11, must accompany the application.

9. Complaints upon which requisitions are to be made should be made before *justices of the peace only*, and not before notaries public, mayors, or police judges. (See paragraph 10.)

10. In some counties, the practice of making affidavits before notaries public, and filing them with justices of the peace as complaints, prevails. This is certainly not based upon a correct interpretation of the statutes of West Virginia; and besides, the statutes of the United States, which govern in the matter of extradition, provide that complaints *shall be made before a magistrate*. Justices of the peace are everywhere recognized as magistrates.

11. The statute requires, in case of complaint, "an affidavit or affidavits, to the facts constituting the offense charged, by persons having actual knowledge thereof." The meaning of this is, *that an affidavit or affidavits giving in detail all known facts and circumstances having a bearing upon a case*, shall be furnished, in support of and to strengthen the complaint, which, generally and properly, is simply a brief statement, charging the offense, and by whom, when, where, and by what means it was committed. If no person other than the complainant possesses the necessary information, there can, of course, be but one such affidavit. These affidavits to be *original* and in *duplicate*.

12. The copies of the *complaint* which accompany the application must be certified by the justice of the peace before whom the complaint was made, to be true copies of the original instrument on file in his office. Sometimes the original complaint is taken in triplicate, and two of them transmitted with the application, under the mistaken motion that they are better than copies; but the statute requires *duly attested copies*.

13. An application based upon *complaint*, when there has been a session of the grand jury after the commission

of the offense, and an opportunity afforded thereby to procure an indictment, will be regarded with disfavor, and a satisfactory explanation of the failure to procure an indictment will be required.

14. In case of *indictment*, the clerk of the court must make duplicate copies of the instrument, and certify, under his official seal, that each is a true copy of the original indictment on file in his office.

15. In case of *complaint*, the clerk of the court must attach to each copy of the instrument, following the certificate of the justice of the peace, the usual certificate as to the qualification, etc., of that officer, which may be in this form:

State of West Virginia, ——— county, to wit: I, ———, clerk of the county court of said county, do hereby certify that ———, whose signature as justice of the peace is attached to the foregoing (or attached) ———, was at the date thereof a duly commissioned and qualified justice of the peace in and for said county, and that I am acquainted with his handwriting, and believe that the signature to the foregoing (or attached) ——— is genuine. Given under my hand and the seal of said court, at ———, this ——— day of ———, 19—.

16. The certificates referred to in the last two paragraphs should invariably be signed by the clerk himself, and not by a deputy. Extradition papers undergo the scrutiny of able lawyers, especially when the surrender of a fugitive is resisted; and opportunity must not be afforded them to defeat or delay justice, and cause unnecessary expense, upon a claim of insufficiency in any respect.

17. Upon the renewal of an application, for example: On the ground that the fugitive has fled to another State not having been found in the State on which the first was granted, new or certified copies of papers, in conformity with the above rules must be furnished.

47. Wisconsin.

No fee. The rules are as follows:

1. Every application to the governor for a requisition must be made in writing by the district attorney or other prosecuting officer of the county in which the crime was committed; *provided*, that if in any case such District attorney or other officer shall refuse to make the application, it may be made by any other person, but must then be accompanied by the affidavit of at least two credible persons, stating, so far as can be ascertained, the reason of such refusal, and all the circumstances connected therewith.

2. The district attorney or other prosecuting officer must, in addition to the requirements of the statute, certify that he is content that said fugitive shall be brought back to the State for trial at the public expense, that such expense shall be a county charge, and that he believes he has within his reach and will be able to produce at the trial the evidence necessary to secure a conviction.

3. Such officer must name in the application a proper person to whom the warrant may issue as agent of the State, and must certify that such person has no private interest in the arrest of the fugitive.

4. The facts and circumstances constituting the offense charged must appear by affidavit and must be sufficient to establish *prima facie* evidence of guilt against the partly accused.

5. Statements made on information and belief should be distinctly defined and the sources of information and grounds of belief must be set forth in detail.

6. If the crime charged be forgery, the affidavit of the person whose name is alleged to be forged must be produced or a sufficient reason given for its absence.

7. It must appear satisfactorily that the object in seeking a requisition is not to collect a debt nor for any private end, but that the application is made in good faith, and with a view to enforce the charge of crime against the offender. This rule will be applied with espe-

cial strictness in all cases of false pretenses embezzlement, and like crimes.

8. It must be affirmatively stated, whether any application for a requisition for the same person for an offense arising out of the same transaction has been previously made, and, if a prior application has been made and denied, any new facts appearing in the papers must be especially pointed out.

9. If the application is based on an information, it must be accompanied by an affidavit containing a detailed statement of the facts and circumstances constituting the offense charged.

10. It must appear by affidavit that the accused was in this State at the time the offense is charged to have been committed, and that he *subsequently* fled therefrom, and the time and circumstances of his departure must be shown as particularly as may be. It must also appear where the accused is, or is believed to be, at the time the application is made.

11. If known, it must appear whether the fugitive has ever been a resident of this State, or has only been transiently here; and if transiently here, for what length of time and on what business, and under what circumstances he departed.

12. If the offense was not of recent occurrence, satisfactory reasons must be given why the application has been delayed.

13. The magistrate before whom the affidavits are taken must certify whether, in his opinion, the parties making the same are to be believed.

14. The official character of the officer before whom the affidavits are taken must be certified to by the clerk of the circuit court.

15. All papers should be *duplicate originals*, except the complaint and warrant, which should be certified copies. Duplicate originals, or certified copies of all papers necessary upon the application must be furnished to the governor, that one set may be retained in this department and the other attached to the requisition. This

requirement is designed to embrace *all* the papers, in the case, including the formal application. In case the application is for a requisition upon the governor of Ohio, *triplicate* originals or certified copies of all the papers must be furnished. When certified copies of papers are given, they must be authenticated as prescribed in Section 4140 of the Revised Statutes.

16. It having been decided that notaries public are not "magistrates" within the meaning of Federal Law, no requisition based upon affidavits made before a notary public will be granted.

17. No requisition will be granted for a fugitive who has taken refuge in the British Provinces.

18. As bastardy is not sufficiently well defined by the laws of this State as a crime within the meaning of Chapter 7 of the Act of Congress of February 12, 1793, no requisition will be granted for the surrender of a fugitive charged with this offense.

19. No requisition will be granted in a case in which the offense is of such trivial character as to leave a doubt of the granting a mandate thereon by the executive authority in other States and Territories.

20. If a requisition shall have been improperly or unadvisedly granted, there will be no hesitation in revoking it.

21. Any application not complying with the requirements of law and these rules, will be rejected, without inquiring into its intrinsic merit, unless noncompliance is satisfactorily explained.

22. In all cases of rejected applications for requisitions, the papers will be retained in this department.

48. Wyoming.

Fee \$5. Rules same as California.

49. District of Columbia.

Fee \$10. See chapter IV, on "Fugitives and the District of Columbia." No rules.

50. Alaska, Territory of.

No fee. No rules or regulations.

51. Hawaii, Territory of.

No fee. No rules or regulations.

52. Porto Rico.

No fee. No rules or regulations.

53. Philippine Islands.

No fee. No rules or regulations.

CHAPTER IX.

AUTHENTICATION.

- § 73. "Certified as Authentic."
- § 74. Force and Effect of Authentication.
- § 75. The Governor's Power and Authority.
- § 76. The Purpose of Authentication.
- § 77. Presumptions.

§ 73. "Certified as Authentic."—The act of Congress of 1793 provides that, "whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, *certified as authentic* by the governor," when this condition arises then a duty is imposed upon the governor of the asylum State or Territory by the Federal statute, requiring such executive to cause the arrest and detention of the alleged fugitive. But before this judicial accusation, in the form of an indictment or affidavit, becomes effective for interstate rendition beyond the limits of the demanding State, the governor's certificate of authenticity must be attached thereto—the failure to annex such certificate is fatal to the legality of the requisition and confers no jurisdiction upon the governor of the surrendering State to arrest and surrender the alleged fugitive. It was so held in *Kingsbury's Case*, (1871), 106 Mass. 233; *Hackney v. Welsh*, (1886), 107 Ind. 253, 8 N. E. 141, 36 L. R. A. 488, 57 Am. Rep. 191; *Ex parte Hampton*, (1895), 1 Ohio N. P. 181.

§ 74. Force and Effect of Authentication.—Just what form this authentication shall take, or what specific

words shall be used the Constitution and the act of Congress in aid thereof, are both silent. In *Kurtz v. State*, (1886), 22 Fla. 36, the supreme court of the State of Florida, in a well-considered opinion, held that, "certified as authentic," the identical language of the act of Congress, means nothing more nor less than that the judicial proceedings, instituted in the demanding State, are absolutely genuine—*bona fide*—and consequently entitled to "full faith and credit" outside of the jurisdiction of such State. And when so "certified as authentic," by the executive making the demand or requisition, is absolutely conclusive as to that fact, on the governor and courts of the surrendering State and no question tending to cast any doubt or suspicion upon the genuineness of the proceedings can be entertained by either. The conclusiveness of the law on this question of authentication, on all parties concerned in interstate rendition cases, has been fully recognized and sustained by the courts, Federal and State, wherever and whenever the same has been brought forward for adjudication. (*Kentucky v. Dennison*, (1860), 24 How. 66; *Ex parte Reggel*, (1885), 114 U. S. 642; *Ex parte Stanley*, (1888), 25 Tex. App. 372, 8 S. W. 645, 8 Am. St. 440; *State ex rel. Denton v. Curtis*, (1910), 111 Minn. 240, 126 N. W. 719.)

§ 75. The Governor's Power and Authority.—The chief executive of the State issuing the requisition for the arrest and surrender of the alleged fugitive from justice is the sole judge as to the genuineness of the affidavit, charging the commission of a crime, where it appears to have been made before a magistrate in his State. And he may, or may not, as he may deem proper, issue or cause to be issued a requisition on the executive of the asylum State, asking for the arrest and surrender of the person found in such State and charged with being a fugitive from his State. The demanding governor's conclusion on this proposition is beyond the pale of judicial investigation in his own State—it is conclusive! But should he issue his requisition, based on an affidavit charging a crime, without being properly sworn

to before the magistrate, by the party making the charge, what effect would this have upon the authentication by the governor of the demanding State? While the governor's authentication might be regarded as conclusive, yet the courts have held repeatedly that such an affidavit—without the magistrate's jurat, for instance—gives the governor no jurisdiction whatever to demand the arrest and deportation of the fugitive, for the reason that not being sworn to it fails to be an *affidavit* within the meaning of the law. The supreme court of the State of Florida so held in *Ex parte Powell*, (1884), 20 Fla. 806. In *Soloman's Case*, (1866), 1 Abb. Pr. (N. S.) 347, it was held by Judge Russell, city judge of New York, that the act of Congress of 1793 is summary in its effect, and must be strictly complied with; otherwise a warrant issued under it would be absolutely void. Therefore, where a governor's warrant of rendition is issued on a requisition based on an affidavit, charging a certain crime and sworn to before a justice of the peace, with a certificate of the secretary of state certifying that he was a justice of the peace and that his attestation was in due form of law, declared not to be a sufficient compliance with such act of Congress and governor's warrant held void and the alleged fugitive discharged from custody.

§ 76. The Purpose of Authentication.—The object and purpose of authentication by the governor of the demanding State, aside from establishing the genuineness of the papers, is to enable the executive upon whom the demand is made to determine for himself whether there is probable cause for believing that a crime has been in fact committed, and that a prosecution has been actually begun against the fugitive in the courts of the State making the demand for his rendition. The fact that the party demanded is charged with crime is to be established by a copy of an affidavit made before a magistrate, or an indictment found by a grand jury, duly certified by the governor of the demanding State as authentic; therefore, it was held by the Federal district court of the

southern district of New York, in the case of *In re Leary*, (1879), 10 Ben. 197, that authentication under the provisions of the judiciary act, as to proof of records of one State in another, can not be required either by the governor or by the courts on *habeas corpus* in the asylum State in interstate rendition cases. The only reason that can be given as to why the certificate of authenticity of the affidavit or indictment is conclusive, is that the statute of the United States makes it so. It is the evidence which that statute requires and makes absolutely sufficient.

§ 77. **Presumptions.**—In *Kemper v. Metzger*, (1907), 169 Ind. 112, 81 N. E. 663, it was held by the supreme court of Indiana, that the presumption is that one authenticating an affidavit or indictment, made a part of requisition papers, as governor of the demanding State, was so acting and holding such office at the time, thus following the ruling of the supreme court of the State of Washington, in *Armstrong v. VanDeventer*, (1899), 21 Wash. 682, 59 Pac. 510, 12 Am. Crim. 327.

In *Ex parte Stanley*, (1888), *supra*, the criminal court of appeals of the State of Texas said that where the governor's warrant recited that it was issued upon the requisition of a State executive, and that a copy of the indictment of the accused accompanied such requisition, and that the executive of the State asking for rendition had certified that such copy was "in due form," it was held that the expression "certified to be in due form" was virtually the same as the words in the statute, "certified as authentic," and that, therefore, the governor's warrant of rendition was sufficient. See *Ex parte Dawson*, (1897), 83 Fed. 306. The supreme court of the State of New Jersey along the same lines, in *Katyuga v. Gosgrove*, (1901), 67 N. J. L. 213, 50 Atl. 679, contended that the objection to the surrender of the fugitive that the affidavit annexed to the requisition, alleging the prisoner to have been a fugitive from justice, was inadequately and improperly authenticated, where the affidavit

is not the only evidence before the governor of such fact, and it being the presumption that the governor informed himself of the law in the premises, is not sufficient to authorize the fugitive's release under *habeas corpus*.

Where a requisition for a surrender of a fugitive from one State to another stated that "it appears by the annexed papers, which I certify to be authentic and duly authenticated," that the fugitive stands charged with the crime of murder and there was annexed thereto a paper indorsed as a true bill and claiming to be an indictment wherein the said fugitive was charged with being an accessory before the fact, it was held that, notwithstanding, it was not stated whether such paper was an original indictment or copy, the requisition was good, the authentication being sufficient. *Ex parte Dickson*, (1902), 4 Ind. Terr. 481, 69 S. W. 943.

CHAPTER X.

THE CHARGE OF CRIME.

- § 78. Fundamental and Jurisdictional.
- § 79. The Charge Must Be by Indictment or Affidavit.
- § 80. Validity of an Information as a Charge of Crime.
- § 81. The Supreme Court's Estimate of an Information.
- § 82. An Extrajudicial Opinion.
- § 83. The Constitution and Act of Congress Construed Together.
- § 84. The Decision in the Hart Case Sound in Reason.
- § 85. An Indictment as an Accusation.
- § 86. The Supreme Court on a Charge by Indictment.
- § 87. The Date when Crime Is Committed.
- § 88. The Right to Examine Indictment or Affidavit as to Legality.
- § 89. Delay in Preferring Charge of Crime.
- § 90. A Formal and Sufficient Charge Necessary.
- § 91. An Affidavit as a Charge of Crime.
- § 92. Insufficient Affidavits.
- § 93. Affidavits Upon Information and Relief.
- § 94. Attempt to Evade Federal Law.

§ 78. **Fundamental and Jurisdictional.**—There can be no legal interstate rendition without a specific charge of crime, therefore, the subject of this chapter is of paramount consideration—indeed, the charge of crime is not only fundamental but is jurisdictional as well—for without it, neither the governor of the demanding State nor the governor of the surrendering State, can exercise any power whatever towards the arrest and deportation of the alleged fugitive, it is only when a charge of crime, by indictment or affidavit, in due form of law, is lodged against the fugitive in the State from which he fled, that the governor of that State acquires jurisdiction to act. Hearsay, suspicion, telephonic and telegraphic information may, under extraordinary circumstances, be sufficient to cause the arrest and detention of the accused person; but never can that person be *lawfully* transported beyond the limits of the State, wherein the arrest

is made, without being legally and specifically charged with "treason, felony, or other crime," committed against the authority of the laws of the State, in which the accused person is assumed to have been at the time of the commission of the offense. A person charged with bastardy in one State and flees into another State or Territory is not subject to arrest and deportation as a fugitive from justice because bastardy is not recognized as a crime under the interstate rendition statutes. The Matter of Cannon, (1882), 47 Mich. 481, 11 N. W. 280.

§ 79. The Charge Must Be by Indictment or Affidavit.
—The charge of crime, as contemplated by the United States Constitution and Section 5278 of the Revised Statutes, relating to interstate rendition, must have as its basis "a copy of an indictment found or an affidavit made before a magistrate * * * charging the person demanded with having committed treason, felony, or other crime," either the one or the other of these judicial accusations must have been brought against the fugitive in the demanding State, before a single step can be *legally* taken towards the arrest and rendition of the alleged fugitive from justice. This doctrine has been strongly and learnedly upheld in *Ex parte Morgan*, (1883), 20 Fed. 298; *Tullis v. Fleming*, (1879), 69 Ind. 15; *Ex parte Lorraine*, (1881), 16 Neb. 63; *Smith v. State*, (1887), 21 Neb. 552, 32 N. W. 594. A mere request by the governor of the demanding State that a certain alleged fugitive be apprehended and returned to the State, where the crime is said to have been committed, is not enough by any means; a formal complaint must be brought against the fugitive in the courts of the demanding State, having jurisdiction to either bind over or finally hear, determine and punish the accused according to law. Hence the absurdity of the Illinois Statute offering to surrender fugitive without copy of indictment. See section 94, *post*. This complaint must be in the form of an indictment found by a grand jury or an affidavit made before a magistrate—this is the plain and explicit command of the statute—and it is a condition precedent to any action

on the subject by the executive authority of either the demanding or surrendering State. The manner in which the charge of crime is to be made is thus defined by the act of Congress, and in this respect supplies the omission of the Constitution. *Commonwealth v. Johnson*, (1892), 2 Pa. Dist. 673; *Jackson v. Archibald*, (1896), 12 Ohio C. C. 155. It is further provided that "a copy" of the indictment or affidavit, making the charge, "certified as authentic," by the executive authority of the State or Territory from which the person had fled, shall accompany the requisition. (*Young v. State*, (1908), 155 Ala. 145, 46 So. 580.) The evident intention of these provisions is, in a legal way, to bring to the knowledge of the executive authority on which the demand is made, this form of *prima facie* evidence that a crime has actually been committed, so as to justify the action of that authority in the arrest and deportation of the alleged fugitive. And also to appraise the fugitive of the nature of the crime charged against him in the demanding State. (*Ross v. Crofutt*, (1911), 84 Conn. 370, 80 Atl. 90, 24 Ann. Cas. 1295.)

§ 80. Validity of an Information as a Charge of Crime.
—A casual glance at the act of Congress of 1793, relating to interstate rendition, will at once demonstrate the fact that there is no provision in this statute authorizing the arrest and deportation of an alleged fugitive from justice upon a so-called "information," sworn to and filed by a prosecuting attorney, *ex officio* or otherwise; although many States have this method of procedure in criminal prosecutions, nevertheless, there is *serious* doubt as to whether or not a fugitive from justice can be *legally* rendited from one State to another when a so-called information is the foundation of the charge of crime in the demanding State. Beyond all question "an indictment found," and "an affidavit made before a magistrate," are the only two forms mentioned by the act of Congress of charging a fugitive from justice with the commission of crime, and upon which can be predicated anything like legal interstate rendition, if the Federal law is to be

followed. The American Congress in 1793—when this statute was passed—knew all about *ex officio* and criminal informations, in fact, long prior to that time a majority of its members, as well as the people generally, had felt the galling effects of the charge of crime brought against them by corrupt and subservient public prosecutors in the form of *ex officio* informations. This, apparently, is the *real* reason why the information does not appear in that statute as a basis for the charge of crime in interstate rendition; indeed, the act of Congress of 1793, is to be treated and regarded as nothing more than a contemporaneous construction of the constitutional provision on this subject, and if this view is to be given any consideration whatever, it must be conceded that the information was intentionally and purposely *ignored* as a basis for the charge of crime in interstate rendition. Even the fifth amendment to the United States Constitution, while in no way relating to rendition, is proof beyond doubt, as to the odious character of informations at that time, for that amendment declares that “no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.” Nevertheless, the supreme court of Nevada in *Ex parte Hose*, (1911), 34 Nev. 91, declared that an information was valid as a charge of crime in interstate rendition.

§ 81. The Supreme Court's Estimate of an Information.—Although the Supreme Court of the United States has never been called upon *directly* to pass upon this question, yet that court on two different occasions, has held that there is no responsible prosecutor behind *ex officio* informations, and that an information lacks the safeguards of an indictment found by a grand jury. *Hurtado v. California*, (1884), 110 U. S. 516; *Ex parte Bain*, (1886), 121 U. S. 1. In the latter case Mr. Justice Miller, speaking for the court, used this forceful language:

“It is never to be forgotten that, in the construction of the language of the Constitution here relied

on, as indeed in all other instances where construction becomes necessary, we are to place ourselves as nearly as possible in the condition of the men who framed the instrument. Undoubtedly the framers of this article had for a long time been absorbed in considering the arbitrary encroachments of the Crown on the liberty of the subject, and were imbued with the common law estimate of the value of the grand jury as a part of its system of criminal jurisprudence. They, therefore, must be understood to have used the language which they did in declaring that no person should be called to answer for any capital or otherwise infamous crime, except upon an indictment or presentment of a grand jury, in the full sense of its necessity and of its value."

§ 82. **An Extrajudicial Opinion.**—A later case before the same court on an appeal, *In re Strauss*, (1905), 197 U. S. 324, 25 Sup. Ct. 535, 47 L. ed. 774, is cited here for the purpose of directing attention to the fact that, the great tribunal of last resort, is not removed beyond the pale of error, by reason of the exalted character of the court. Its gratuitous expression in this case, on the value of an information as a charge of crime in rendition procedure, was extrajudicial in the fullest sense and is to be regarded as mere *dictum* in itself, for the reason that that question was not before the court for adjudication. One Strauss had been arrested in New York, as a fugitive from the justice of the State of Ohio, charged by affidavit with obtaining money by false pretenses. It was contended by his attorney that, the justice of the peace before whom the affidavit was made, had no jurisdiction to finally try and punish the accused, consequently no rendition was valid based upon such an affidavit. Mr. Justice Brewer, delivering the opinion of the court, said:

"Under the Constitution each State was left with full control over its criminal procedure. No one could have anticipated what changes any State might make therein, and doubtless the word 'charged' was used in its broad signification to cover any proceeding which a State might see fit to adopt by which a formal accusation was made against an alleged

criminal. In the strictest sense of the term a party is charged with crime when an affidavit is filed, alleging the commission of an offense and a warrant is issued for his arrest, and this is true whether a final trial may or may not be had upon such charge. It may be, and is true, that in many of the States some farther proceeding is, in the higher grade of offenses at least, necessary before the party can be put upon trial, and that the proceedings before an examining magistrate are preliminary, and only with a view to the arrest and detention of the alleged criminal; but extradition is a mere proceeding in securing the arrest and detention * * * And these preliminary proceedings are not completed until the party is brought before the court in which the trial may be had. Why should the State be put to the expense of a grand jury and an indictment before securing possession of the party to be tried. It may be true, as counsel urge, that persons are sometimes wrongfully extradited, particularly in cases like the present; that a creditor may wantonly swear falsely to an affidavit charging a debtor with obtaining goods under false pretenses. But it is also true that a prosecuting officer may either wantonly or ignorantly file an information charging a like offense. But who would doubt that an information, where that is the statutory pleading for purposes of trial, is sufficient to justify an extradition."

The supreme court of the State of Wisconsin, in *In re Hooper*, (1881), 52 Wis. 699, 58 N. W. 741, held that an *ex officio* information, filed by a prosecuting officer, was equivalent to the indictment or affidavit required by the Federal statute, and formed a sufficient basis for the rendition of a fugitive from justice. The supreme court of the State of Michigan, in *People v. Stockwell*, (1904), 135 Mich. 341, 97 N. W. 765, it was also held that an information was a legal substitute for an indictment in rendition proceedings. The same ruling was practically made in the following cases: *State v. Hufford*, (1869), 28 Iowa, 391; *Ex parte White*, (1875), 49 Cal. 434; *Ex parte Edwards*, (1907), 91 Miss. 621, 44 So. 827.

§ 83. **The Constitution and Act of Congress Construed Together.**—It will be observed by a careful examination of the authorities cited, that, the decisions upholding the validity of an information as a charge of crime in rendition, look rather to article IV, section 2, of the Constitution for the authority, than to the act of Congress of 1793, in aid thereof, where the manner of the charge of crime is plainly set forth. As has been repeatedly stated the provision of the Constitution, relating to interstate rendition, was not self-executing—the method of charging the fugitive with crime was not mentioned therein—for this and other reasons the attorney-general of the United States in 1792 had declared that provision inoperative, and therefore, the act of 1793 was passed by Congress to give it force and effect. Why should not the constitutional provision and the congressional enactment both be taken together in construing the law as to what is a proper charge of crime in rendition procedure? The word “charged,” used in article IV, section 2, of the Constitution, has been given a construction by Congress and that construction determines what is meant by being “charged.” To be “charged,” means, in the language of the act of Congress, the production of “a copy of an indictment found or affidavit made before a magistrate of any State or Territory charging the person demanded with treason, felony, or other crime.”

§ 84. **The Decision in the Hart Case Sound in Reason.**—The leading authority on this question and the one most generally quoted, is the case of *Ex parte Hart*, (1894), 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 809. And although twenty years have passed since the opinion in this case was rendered, yet during this time, no decision of any court, excepting alone the United States Supreme Court, has been so approvingly cited and commended as that in the Hart case, by the United States circuit court of appeals, fourth circuit, *denying the validity* of an *information* as a *substitute* for an indictment or affidavit in interstate rendition, and it is to be regretted that this case was not carried up by appeal, to

the highest court of the land, in order that that question might have been finally and authoritatively settled.

In 1894, one Samuel H. Hart, filed his petition in the circuit court of the United States of the State of Maryland, alleging that he was unjustly deprived of his liberty, and illegally confined in the Baltimore city jail, charged with the crime of embezzlement and praying that the writ of *habeas corpus* issue. The writ was duly issued and served. From the return of the respondent it appeared that the said Hart, the petitioner, was held in custody under a warrant, issued by the governor of Maryland, by virtue of a requisition from the governor of the State of Washington, demanding the arrest and rendition of the said Hart as a fugitive from the justice of that State. The demand or requisition was based on a so-called "information," signed and sworn to by the prosecuting attorney of Pierce county, State of Washington. Upon a hearing the writ was quashed and Hart was remanded but at once prayed an appeal to the United States circuit court of appeals, fourth circuit, consisting of the Honorable Nathan Goff, circuit judge, the Honorable Charles H. Simonton, circuit judge and the Honorable Robert W. Hughes, district judge. The three Federal judges heard the case and in an able and well considered opinion overruled the lower court (*Ex parte Hart*, (1894), 59 Fed. 894;) and held that while each State might regulate its own criminal practice, yet it was not entitled to the benefits of the interstate rendition laws unless strict compliance with the statute was observed. Judge Goff, speaking for the court, said:

"The removal of a citizen from one State to another as a fugitive from justice is a matter of great importance and worthy of serious consideration, yet always to be ordered when a proper case is made. Such action is based upon article IV, section 2 of the Constitution of the United States, and the laws enacted to enable the same to be executed. The provision referred to will be strictly construed, and all the requirements of the statute must be respected. In this case, does it appear that the papers trans-

mitted and certified to by the governor of the State of Washington were of the character required for the purpose of securing the warrant of arrest and extradition? The first requisition, dated December 23, 1893, recites that it appears by a copy of an 'information,' which is annexed, and certified to be authentic, that the petitioner stands charged with the crime of larceny by embezzlement. We do not consider this a compliance with the act of Congress, which we think requires the copy of an indictment found by a grand jury, and not the copy of an information filed by the attorney for the State. An information cannot be regarded as a substitute for an indictment where the latter is required in the legislation now under consideration. While it is in the power of the State to provide for the prosecution and punishment of all manner of crime by information, and without indictment by a grand jury, (as was held by the Supreme Court of the United States in *Hurtado v. California*, (1884), 110 U. S. 516, 4 Sup. Ct. 292), still, if they wish to rely upon the provisions of the Constitution and laws of the United States relating to fugitives from justice, they must strictly observe and respect the conditions of the same. The indictment had in mind by those who framed the Constitution and enacted the statute referred to was 'a written accusation of one or more persons of a crime or misdemeanor preferred to and presented upon oath by a grand jury.' 4 Black. Comm. 299-302. The Supreme Court of the United States has recently described an indictment, as that word is used in the Constitution, as 'the presentation to the proper court, under oath, by a grand jury, duly empaneled, of a charge describing an offense against the law for which the party charged may be punished.' *Ex parte Bain*, (1886), 121 U. S. 1, 7 Sup. Ct. 781.

"Holding as we do, that the information cannot be considered as the equivalent of an indictment, we will now examine the argument of counsel for the State of Washington that the verification of the information will be regarded as such an affidavit as is required by the law. The information is verified

by the prosecuting attorney, who swears that he believes the contents thereof to be true, and not that they are true. This is not such charging of the commission of crime before a magistrate of the State as is contemplated by the statute. For the purposes of an affidavit to be used for the arrest and removal of a fugitive from justice, this is not sufficient. The affidavit required in such cases should set forth the facts and circumstances relied on to prove the crime, under the oath or affirmation of some person familiar with them, whose knowledge relative thereto justifies the testimony as to their truthfulness, and should not be the mere verification of a court paper by a public official, who makes no claim to personal information as to the subject-matter of the same. *Ex parte Smith*, (1842), 3 McLean, 121, Fed. Cas. No. 12,968; *In re Doo Woon*, (1883), 18 Fed. 898; *Ex parte Morgan*, (1883), 20 Fed. 298. By requiring such an affidavit the liberty of the citizen is, to a great extent, protected, and the executive upon whom the demand is made is thereby enabled to determine if there is cause to believe that a crime has been committed. To authorize the removal of a citizen of Maryland to the State of Washington for trial on a charge of crime something more than the oath of a party unfamiliar with the facts that he believes the allegations of an information to be true should be required, and is demanded by the law. To hold otherwise would enable irresponsible and designing parties to make false charges with impunity against those who may be the subjects of their enmity, and permit them, after they have caused public officials to believe their representations, on papers regular in character, but without merit and fraudulent in fact. * * *

“The claim that the act of the governor of a State in issuing his warrant of removal is conclusive, and that the presumption is that he had the necessary papers, duly authenticated, before him when he acted, cannot be assented to. The act of the governor can be reviewed, and, if he has not followed the directions and observed the conditions of the Constitution and laws of the United States, pertinent to

such matters, can be set aside as void. The highest as well as the most obscure official must respect the requirements of the Constitution and laws made thereunder. The acts of the executive are subject to review by the courts by means of the writ of *habeas corpus*. It is not now necessary to cite authorities on this question, nor to recall incidents in English history, showing that this writ will issue, no matter how obscure the prisoner, or how great the power of the official who detains him.

“We find that the requisitions issued by the governor of the State of Washington did not comply with the law, and that the governor of the State of Maryland was not furnished with a copy of either an indictment or affidavit made as required by section 5278 of the Revised Statutes of the United States and consequently we hold that the warrant of removal is void. The judgment of the circuit court will be reversed, and the petitioner will be discharged from arrest.”

The opinion in this case is worthy of more than ordinary attention, for the reason that the court displayed unusual courage in defending the rights of the citizen, and disregarded the judge-made law, which permits an “information” to be received as a substitute as a charge of crime, for an indictment or affidavit in rendition procedure. It is unquestioned that the provision of the United States Constitution relating to interstate rendition, and the act of Congress in aid thereof, taken together constitute the supreme law of the land on that subject, and must therefore control; and being interference with personal liberty, it comes within the same rule applying to penal statutes: that all statutes in derogation of personal liberty must be strictly construed. This was the rule enunciated in *Soloman’s Case*, (1866), 1 Abb. Pr. (N. S.) 347, and upheld by a long line of decisions. In a rendition case lately heard in the criminal court of appeals of the State of Oklahoma, *Ex parte Owen*, (1913), 10 Okl. Crim. 284, 136 Pac. 199, it was held by a united court, that—

“This proceeding being based upon a Federal statute, we are not at liberty to follow the rule of construction which we apply to our own statutes, because the common law doctrine of a strict construction of penal statutes is adhered to by the Supreme Court of the United States, and, under this rule, no person can be deprived of a single right or punished for any offense unless the act complained of, and the proceedings thereon, come strictly within the letter as well as the spirit of the law.”

The only reasonable construction that can be placed upon section 5278, as the proper method of bringing a charge of crime against the fugitive criminal, is to follow the ruling of the United States circuit court of appeals in the Hart case. The doctrine enunciated by the court in that case is in harmony with the letter and spirit of the law, and in accord with the intention of the Congress of 1793, which passed the act relating to fugitive rendition between the several States.

But few of the State supreme courts have passed upon this question. The Texas court of criminal appeals is a noted exception—that court has most positively and unequivocally sustained the rule as laid down in the Hart case, *supra*. In Illinois, while the supreme court has not passed upon the validity of an *ex officio* information, as a charge of crime in interstate rendition proceedings, yet when the question was presented to the attorney-general of that State by the governor for an opinion, that official held as follows:

Springfield, Ill., November 16, 1909.

To His Excellency, Charles S. Deneen, Governor:

Sir:—You have submitted to me a requisition made by the governor of the State of Idaho upon you, for the return to the State of Idaho of one A. K. Brown, who, it is alleged, stands charged in the county of Kootenai in said State of Idaho, with the crime of forgery.

By an examination of the papers accompanying said requisition, I find an information filed in the district court of the eighth judicial district of the State of Idaho, in and for the county of Kootenai, by C. H. Potts, prose-

cuting attorney of said Kootenai county, charging in due form, in said information, that A. K. Brown, committed the crime of forgery.

From other papers accompanying said requisition, it appears that said Brown is a fugitive from justice. The question arises to whether or not the papers submitted are in conformity with the act of the Congress of the United States, relative to extradition between States. The section of the Federal act, under which executives of States act in demanding the return of fugitives from justice, reads in part as follows:

“5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produced a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear.”

I am of the opinion that the papers accompanying the requisition in question are not sufficient to authorize the executive of this State to issue his warrant for the apprehension and delivery of the defendant to the agent of the State of Idaho.

No certified copy of an indictment accompanies the papers. There is no affidavit made before a magistrate charging the defendant with the commission of a crime. Instead thereof, the only paper accompanying the requisition is a certified copy of an *ex officio* information, charging said Brown with the commission of the crime of forgery.

While such *ex officio* information would be sufficient, no doubt, to place the defendant on trial in the proper court of Idaho, yet such *ex officio* information is not sufficient, under the Federal statutes, upon which to base an application for a requisition, or to authorize the governor of the State of asylum to honor such requisition.

The Federal statute is specific that the charge must be either *by indictment* or *by an affidavit* made before a magistrate. Such showing has not been made in this case and, as above stated, my opinion is that the Governor of this State is not authorized to grant his executive warrant.

Very respectfully,

W. H. STEAD,
Attorney General.

§ 85. **An Indictment as an Accusation.**—But now a word or so concerning an indictment found by a grand jury, as a charge of crime, in interstate rendition. It must be conceded that, when a requisition is based on an indictment, substantially charging the alleged fugitive with the commission of a crime in the demanding State, this form of judicial accusation is not only the safer, but the more certain and satisfactory method of charging a crime against a fugitive from justice. The courts on *habeas corpus* have not gone near so far in disregarding indictments when accompanying requisitions; as they have affidavits; in fact, it is generally admitted that an indictment possesses a higher validity as evidence of the charge of crime, and is less liable to attack, on the ground of insufficiency, than any other criminal accusation.

In the Davis' Case, (1877), 122 Mass. 324, it was held by the supreme court of Massachusetts that when an indictment is made the basis of the charge of crime in a requisition it is wholly unnecessary to furnish evidence that the act charged is an offense against the laws of the demanding State, the indictment itself is *prima facie* evidence of this fact. And in reply to the allegation that the indictment from the demanding State did not show a crime against the laws of that State, the court replied:

“When an indictment appears to have been returned by a grand jury, and is certified as authentic by the governor of the other State, and substantially charges a crime, this court cannot, on *habeas corpus*, discharge the prisoner because of formal defects in the indictment; but the sufficiency of the charge, as a matter of technical pleading, is to be tried and determined in the State in which the indictment is found.”

The same rule was practically enunciated in *In re Clark*, (1832), 9 Wend. 212; *In re Greenough*, (1858), 31 Vt. 279; *Kingsbury's Case*, (1871), 106 Mass. 324; *In re VanSceiver*, (1894), 42 Neb. 772, 60 N. W. 1037, 47 Am. St. 730; *Barrenger v. Baum*, (1897), 103 Ga. 465, 30 S. E. 529, 68 Am. St. 123; *Webb v. York*, (1897), 79 Fed. 616, (*citing Roberts v. Reilly*, (1885), *supra*; *Ex parte Pearce*, (1893), 32 Tex. Crim. 301; *In re Roberts*, (1885), 24 Fed. 132; *In re White*, (1891), 45 Fed. 237; *In re Keller*, (1888), 36 Fed. 681; *Kurtz v. State*, (1886), 22 Fla. 36, 1 Am. St. 778.

§ 86. The Supreme Court on a Charge by Indictment.

—The Supreme Court of the United States in *Pearce v. Texas*, (1894), 155 U. S. 387, 15 Sup. Ct. 116, 39 L. ed. 164, in affirming the judgment of the court of appeals of the State of Texas, upholds the validity of the indictment, as a charge of crime in the surrendering State, in the following words:

“A requisition for the return of a fugitive from justice cannot be denied when the copy of the indictment or affidavit attached to the requisition is held sufficient by the courts of the State where the offense was committed, although it would not be held good by the courts of the State where the accused has taken refuge.”

The enunciation of this principle by the highest tribunal of the land has had much to do with practically settling constant and recurring attacks on the legality of indictments and affidavits in the surrendering States. And in a later case, *Whitten v. Tomlinson*, (1895), 160 U. S. 245, 16 Sup. Ct. 297, 40 L. ed. 406, the same court speaking of the indictment as a charge of crime, said:

“A warrant of extradition of the governor of a State, issued upon the requisition of the governor of another State, accompanied by a copy of an indictment, is *prima facie* evidence, at least, that the accused had been indicted and was a fugitive from justice; and, when the court in which the indictment was found has jurisdiction of the offense, is sufficient to make it the duty of the courts of the United States to decline interposition by writ of *habeas corpus*, and to leave the question of the lawfulness of the detention of the prisoner, in the State in which he was indicted, there to be inquired into and determined in the first instance, by the courts of that State, which are empowered and obliged, equally with the courts of the United States, to recognize and uphold the supremacy of the Constitution and laws of the United States.”

When however, the indictment does *not substantially* charge the alleged fugitive with the commission of a crime, under and in accordance with the laws of the demanding State, the courts of the surrendering State, on *habeas corpus* proceedings, have the power to declare the governor's warrant void for the lack of a legal charge of crime. In *Armstrong v. VanDeventer*, (1899), 21 Wash. 682, 59 Pac. 510, 12 Am. Crim. 327, and in *In re Waterman*, (1907), 29 Nev. 288, 89 Pac. 291, 11 L. R. A. (N. S.) 424, 13 Ann. Cas. 926, the supreme courts of these respective States declared the governor's warrant of rendition in each instance absolutely void because the respective indictments did not substantially charge any crime. It is not very often that the courts resort to such drastic measures in passing upon the indictment of another State as a charge of crime.

§ 87. The Date when Crime Is Committed.—The date on which an alleged crime is charged to have been committed in the demanding State, as mentioned in the indictment or affidavit, accompanying the requisition, is not always binding upon the authorities of that State. (1 Pomeroy's Archibald's Cr. Pr. & Pl. 363.) This was the view of the Supreme Court of the United States in the

case of *McNichols v. Pease*, (1907), 207 U. S. 110, 62 L. ed. 121, wherein an attempt had been made to show that the accused was absent from the demanding State, on the day and date, stated in the affidavit as the time when the crime was committed. The supreme court of the State of Minnesota in *State ex rel. Rinne v. Gerbes*, (1911), 111 Minn. 132, 126 N. W. 482, held that the date on which a crime is charged in the indictment or affidavit to have been committed, when not an essential element of the crime itself, is not in any respect material and that it is sufficient to charge some specific date prior to the finding of the indictment or prior to the making of the affidavit. For instance in the State of Alabama no certain date is required to be specified in the indictment or affidavit, the statute dispensing entirely with *time* and venue. But where a demand is made by Alabama for the rendition of an alleged fugitive, a fixed date, when the accused is charged to have been in the State and to have committed the crime, is certainly to be required of the authorities of that State.

§ 88. The Right to Examine Indictment or Affidavit as to Legality.—Prior to the decision of the Supreme Court of the United States, some thirty years ago, in *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544, there was some doubt as to the right of the courts to go behind the governor's warrant, and examine the indictment or affidavit accompanying the requisition, for the purpose of ascertaining if a lawful charge of crime was therein set forth against the fugitive criminal. The opinion of the court in this case has set at rest this proposition, and dispelled all doubt as to the legality of such judicial inquiry. The rule for the guidance of both governors and courts, in interstate rendition procedure, as enunciated by the highest court of the Union, is as follows:

“It must appear, therefore, to the governor of the State to whom such demand is presented, before he can lawfully comply with it, First, that the person demanded is substantially charged with a crime

against the laws of the State, from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor of the State making the demand; and,

“Second, that the person demanded is a fugitive from the justice of the State the executive authority of which makes the demand. The first of these prerequisites is a question of law, and is always open upon the face of the papers to judicial inquiry on application under a writ of *habeas corpus*.”

See also *In re Fairman*, (1905), 3 Ohio N. P. (N. S.) 485; *Harland v. Terr. of Wash.* (1887), 3 Wash. Terr. 131, 13 Pac. 453; *Worth v. Wheatley*, (1915), 183 Ind. 598, 108 N. E. 958.

§ 89. **Delay in Preferring Charge after Crime.**—Where a person is arrested in a State as a fugitive from the justice of another State, and the requisition of the governor of the demanding State is based upon an indictment or an affidavit, showing that the alleged crime was committed some time long passed, this failure to bring against the accused the charge of crime following its commission, unless fully and satisfactorily explained, should be regarded by the officials of the asylum State with some degree of suspicion and will warrant a close investigation as to the cause of such delay in the demanding State. And should it appear that, such tardy action on the part of the prosecution is influenced by other motives, than the punishment of the accused for such crime, then and in that event, the demand or requisition ceases to fall within the provisions of the Constitution and laws of the United States, relating to interstate rendition, and the executive authority of the surrendering State is justified in ignoring the same. When the purpose of the intended custody discloses any other object than the punishment of the fugitive for the crime or crimes committed, the “demand” loses its legality under the law, and the implied obligation of compliance on the asylum State no longer exists.

§ 90. A Formal and Sufficient Charge Necessary.—

It has been held by many courts that the technical sufficiency of the indictment as a criminal pleading, charging the fugitive with crime in the demanding State, cannot be passed upon by the courts of the surrendering State, but must be left to the decision of the courts of the State where the crime is alleged to have been committed. This is the law, but it should not be forgotten that there is other law, well and thoroughly established, not only by the common law, but also under constitutional and statutory provisions in all jurisdictions, that there can be no legal conviction for or punishment of a crime without a formal and sufficient charge of crime; and that, in the absence thereof, a court acquires no jurisdiction whatever, and if it assumes jurisdiction such trial and conviction would be absolutely void. The technical sufficiency of the indictment as a criminal pleading cannot be inquired into in the asylum State, yet as already stated, if the indictment does not substantially charge a crime, in the particular form and mode required by the statute of the demanding State, then and in that event, it is the duty of the courts of the asylum State to declare the governor's warrant of rendition void and order the discharge of the alleged fugitive. *Munsey v. Clough*, (1904), 196 U. S. 364, 25 Sup. Ct. 282, 49 L. ed. 515, affirming 71 N. H. 594; *Depoily v. Palmer*, (1906), 28 App. Cas. 324; *In re Strauss*, (1903), 126 Fed. 327; *McNichols v. Pease*, (1907), 207 U. S. 110, 62 L. ed. 121.

Where rendition proceedings were instituted by the State of Alabama to prosecute petitioner for an alleged homicide committed in that jurisdiction, under the laws of which it was not essential that the indictment should charge either the time or venue of the offense, it was held that an indictment omitting such elements was not objectionable for that reason in rendition procedure. *Coleman v. State*, (1908), 53 Tex. Crim. 93, 113 S. W. 17.

In *habeas corpus* by prisoners held pursuant to an indictment found in a sister State, the burden is on such prisoners to show that the indictment, coming from the

demanding State, is insufficient by producing, if necessary, the statute under which it was found, and hence, the fact that such statute was not submitted with the requisition papers to the governor under whose warrant the prisoners were arrested, will not warrant the presumption that the law of the sister State is the same as that of the forum, under which the indictment would be sufficient. *In re Renshaw*, (1904), 18 S. D. 32, 99 N. W. 83, 112 Am. St. 778. In *Ex parte Hart*, *supra*, it was held that, where the requisition contains a mere recital that a duly authenticated copy of an indictment is annexed, but in reality there is no indictment annexed, such a recital is of no force and effect and any warrant of rendition issued on such a requisition is absolutely void. *Ex parte Devine*, (1897), 74 Miss. 714, 22 So. 3.

The supreme court of the State of Texas in *Hibler v. State*, (1875), 43 Texas, 197, held that the absence of a file mark on the copy of the indictment or lack of a seal of the clerk of the court where the same was returned, will not invalidate the indictment, if it is duly authenticated by the chief executive of the demanding State.

§ 91. **An Affidavit as a Charge of Crime.**—But when an affidavit is made the basis of the charge of crime in rendition proceedings the courts on *habeas corpus* are inclined to scrutinize more closely the general form and accusation, holding the accuser or affiant to no less a degree of certainty than is required in an indictment for the same offense. The election of supporting the requisition either by an indictment found by a grand jury or an affidavit made before a magistrate, is left wholly and entirely by the Federal law to the authorities of the demanding State, and the great preponderance of charges by affidavit, is accounted for upon the ground that this form of accusation is usually obtained with the least difficulty and in the shortest time. In many instances the consequence is that the document purporting to be an affidavit is but the ranting ebullition of an all-wise justice of the peace, confident of his ability to properly draft a

charge of crime, which will stand the test in the highest courts of the land.

As between charges made by affidavits and charges by indictments a distinction was suggested in *In re Greenough*, (1858), 31 Vt. 279, in these words: "The court, upon *habeas corpus*, cannot pronounce upon the guilt or innocence of the alleged fugitive. That must be left to the courts of that State where the crime is alleged to have been committed. If the charge is by way of affidavit against the alleged fugitive and it clearly appears from the whole facts stated in the affidavit taken together that no crime has been committed, it might with some show of reason be claimed that the subject matter was not within the provisions of the Constitution and act of Congress, and therefore as to the jurisdiction of the warrant, the whole matter would be *non coram iudice*. But that is far from being the case. Here the charge against the alleged fugitive is by a bill of indictment found by a grand jury, and whether the bill charges an indictable offense under the statutes of Illinois should be left to the determination of the courts of that State."

The supreme court of the State of New York, in *People ex rel. Lawrence v. Brady*, (1874), 56 N. Y. 182, pointed out the difference between the two forms of charging a fugitive criminal with the commission of an offense, and reaffirmed the doctrine enunciated in *Ex parte Smith*, (1843), *supra*, that the courts have the right to interfere, examine the grounds upon which the executive warrant of rendition issued and if there was no legal charge of crime to declare the warrant void and order the discharge of the alleged fugitive. In the course of the opinion the court says: "It cannot be held that any less degree of certainty is admissible in an affidavit charging the conspiracy, than is required in an indictment for the same offense. If any distinction exists in this respect the affidavit should be the more full and specific." With this rule in view, the courts of the surrendering State, Federal and State, have generally regarded the affidavit, as rather a weak and hazardous method of charging

crime and far from conclusive as to its commission—especially a felony—and hence, care and caution have characterized the ruling of the courts, when an affidavit has been made the basis of a charge of crime, and is attacked on *habeas corpus*, on the ground of insufficiency.

§ 92. Insufficient Affidavits.—The cases which follow are interstate rendition cases—each based on an affidavit—the courts, after a thorough examination, have pronounced each affidavit insufficient as a charge of crime, and as a result in each case the alleged fugitive was discharged: *Ex parte* Smith, (1843), *supra*; *In re* Heyward, (1848), 1 Sandf. 701; *State v. Hufford*, (1869), *supra*; *Soloman's Case*, (1866), *supra*; *People ex rel. Lawrence v. Brady*, (1874), *supra*; *In re Rutter*, (1869), 1 Abb. Pr. (N. S.) 67; *Ex parte* Dimmig, (1887), 74 Cal. 164, 15 Pac. 619; *Smith v. State*, (1887), *supra*; *Ex parte* Morgan, (1883), *supra*; *In re Leland*, (1869), 7 Abb. Pr. (N. S.) 64; *In re Fitton*, (1891), 45 Fed. 474; *In re Doo Woon*, (1883), *supra*; *Ex parte* Spears, (1891), 88 Cal. 640, 26 Pac. 609, 22 Am. St. 341; *Ex parte* Rowland, (1895), 35 Tex. Crim. 108, 31 S. W. 651; *Ex parte* Slauson, (1896), 73 Fed. 666; *State v. Richardson*, (1886), 34 Minn. 115, 24 N. W. 354; *Ex parte* Pfitzer, (1867), 28 Ind. 450; *Ex parte* Baker, (1901), 43 Tex. Crim. 281, 65 S. W. 91, 96 Am. St. 871; *In re* Tod, (1900), 12 S. D. 386, 81 N. W. 637, 76 Am. St. 616, 47 L. R. A. 566; *Dennison v. Christian*, (1904), 72 Neb. 703, 101 N. W. 1045; *Barriere v. State*, (1904), 142 Ala. 72, 39 So. 55; *Ex parte* Cheatham, (1906), 50 Tex. Crim. 51, 95 S. W. 1077; *People ex rel. Cornett v. The Warden*, (1908), 60 Misc. 525, 112 N. Y. S. 492, 23 N. Y. Crim. 37; *Ex parte* Owen, (1913), *supra*; *Ex parte* Lewis, (1914), — Tex. Crim. —, 170 S. W. 1098; *In re* Kuhns, (1914), 36 Neb. 487, 137 Pac. 83; *Ex parte* Brown, (1915), — Tex. Crim. —, 178 S. W. 366.

§ 93. Affidavits upon Information and Belief.—The reason why so many affidavits—charges of crime—have been judicially declared insufficient, to warrant the rendi-

tion of the alleged fugitive from justice, is because the demanding State officials, in their haste and anxiety to secure the arrest and return of the accused, give but little attention to the preparation of the affidavit, the formal and legal basis of the charge of crime brought against the fugitive. The duty of drawing this document is often assigned to persons unfamiliar with the simplest elementary principles of the law, the result is, in nine such cases out of ten, the affidavit, when assailed in *habeas corpus* proceedings, in the surrendering State, is "shot to pieces" and the accused goes free, and, a miscarriage of justice is charged against the court or judge trying such case. Were it possible to examine the affidavits in the cases cited, it would be seen that most of them are wholly lacking in actual and personal knowledge of facts detailed therein by the affiants—information and belief—hearsay and suspicion—supplying the greater part of the material for the charge of crime against the alleged fugitives from justice. That such affidavits are utterly worthless as an accusation against a person charged with being a fugitive from justice, is too apparent for dispute.

In *People ex rel. Cornett v. The Warden, etc.*, (1908), *supra*, the New York supreme court said:

The authorities of this State must be legally apprised of the facts upon which the constitutional and statutory duty to deliver a citizen, inhabitant or temporary resident of this State, depends. The law on this subject has been recently restated by the court of appeals, (the court of last resort in New York,) in *People ex rel. Livingston v. Wyatt*, (1906), 186 N. Y. 386, at page 392:

"Suspicion is not enough, and information and belief are not enough, unless facts are stated showing the source of the information and the grounds of belief. The information should fairly warrant the inference by the magistrate that in good faith and on reasonable grounds the complainant believes that a definite crime has been committed by a designated person."

In *Lipman v. People*, (1898), 175 Ill. 101, 51 N. E. 872, the supreme court of Illinois held that the "affidavit must show probable cause arising from facts within knowledge of affiant, and must exhibit the facts upon which belief is based and that his mere belief is insufficient."

In *Ex parte Dimmig*, (1887), *supra*, the supreme court of California held that "a mere affidavit in the form of an information, containing no evidence and followed by no deposition stating any fact tending to show guilt, is insufficient to support warrant of rendition."

In *State v. Gleason*, (1884), 32 Kan. 245, 4 Pac. 363, 5 Am. Crim. 172, the supreme court of Kansas said, "A complaint or information filed, verified on nothing but hearsay and belief, is not sufficient to authorize the issuance of a warrant. Positive proof is required by affiant having personal knowledge."

In *United States v. Tureaud*, (1884), 20 Fed. 621, it was held by the United States district court of Louisiana that, "informations must be based upon affidavits which show probable cause arising from facts within the knowledge of the parties making them; the mere belief of affiant is insufficient."

In *State ex rel. Register v. McGahey*, (1903), 12 N. D. 535, 97 N. W. 865, the supreme court held that, "an affidavit made upon information and belief and not otherwise corroborated, is of no value as a charge of crime."

§ 94. Attempt to Ignore Federal Law.—Illinois has furnished the most striking example of disregard of Federal law, on the subject of interstate rendition, to be found in the general range of legislation of all the States. In 1845 the legislature of that State passed an act which provides that where a party has been arrested by a judicial magistrate, *before* a demand for his delivery as a fugitive from justice and examined by such magistrate, "if, in the opinion of the executive of this State, the examination so furnished, contains sufficient evidence to warrant the finding of an indictment against such person,

he shall forthwith notify the executive of the State or Territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, *without requiring a copy of an indictment to accompany such demand.*”

The States of Arkansas, Colorado, Kansas, Missouri and Nebraska, each have passed similar statutes to that of Illinois manifestly and unconditionally repugnant to the act of Congress of 1793, relating to fugitives from justice, and therefore absolutely void. In the States named, it is proposed to abrogate the Constitution and laws of the United States, by surrendering the alleged fugitive “without requiring a copy of an indictment to accompany the demand,” because the evidence against the accused, in the opinion of the executive, is sufficient to warrant an indictment. The fallacy of this theory is too apparent for argument. No court, State or Federal, would for one moment hesitate in declaring such a statute wholly unconstitutional. The fact that such a law could remain unchallenged upon the statute books of Illinois for the period of seventy years and not meet such a fate is almost beyond belief. In *Robb v. Connolly*, (1884), 111 U. S. 624, 4 Sup. Ct. 544, 28 L. ed. 542, the Supreme Court of the United States on this very subject, said:

“When a demand (in interstate rendition) has been made in accordance with the Constitution of the United States, by the State from which the fugitive has fled upon the executive authority of the State in which he is found, that instrument, indeed, makes it the duty of the latter to cause his arrest and surrender to the executive authority of the demanding State, or to the agent of such authority. But if it should appear, upon the face of the warrant issued for the arrest of the fugitive, that such demand was not accompanied or supported by a copy, certified as authentic, of an indictment found against the accused, or of any affidavit made before a magistrate of the demanding State charging the commis-

sion by him of some crime in the latter State, could it be claimed that the arrest of the fugitive would be in pursuance of the act of Congress, or that the agent of the demanding State had authority from the United States to receive and hold him to be transported to that State? This question could not be answered in the affirmative, except upon the supposition, not to be indulged, that, so far as the Constitution and legislation of Congress is concerned, the transporting of a person beyond the limits of the State in which he resides or happens to be, to another State, depends entirely upon the arbitrary will of the executive authorities of the State demanding and the State surrendering him."

In a later case *People ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 182, 64 N. E. 825, 60 L. R. A. 774, 92 Am. St. 706, the court of appeals of the State of New York declared that:

"No person can or should be extradited from one State to another unless the case falls within the constitutional provision, and that the power which independent nations have to surrender criminals to other nations is not possessed by the States."

The decision in this case by the court of appeals was affirmed by the Supreme Court of the United States in the case of *Hyatt v. People ex rel. Corkran*, (1903), 188 U. S. 691, 23 Sup. Ct. 456, 47 L. ed. 657, 12 Am. Crim. 311, and in such terms that make the words, quoted above, the supreme law of the land, and overruling the decisions in *In re Fetter*, (1852), 23 N. J. L. 315, 57 Am. Dec. 382, and *State v. Hall*, (1895), 115 N. C. 818, 20 S. E. 729, 44 Am. St. 501, 28 L. R. A. 289, this was the opinion expressed by Federal Judge Hough, in the case of *In re Kopel*, (1906), 148 Fed. 505.

CHAPTER XI.

THE GOVERNOR'S WARRANT.

- § 95. Essentials of the Process.
- § 96. Must Be Legally Issued.
- § 97. Its Recitals Evidence of Legality of Issuance.
- § 98. Who May Serve Warrant.
- § 99. Entitled to no Greater Sanctity Than Other Process.
- § 100. Revocation and Alias Warrants.
- § 101. Rules Relating to the Governor's Warrant.

§ 95. Essentials of the Process.—The governor's warrant, sometimes called the executive warrant of rendition, is the process generally issued by the secretary of state at the direction of the governor and duly *signed* by him, upon the requisition of the executive authority of the demanding State, commanding the officer to whom the warrant is directed, to arrest the person charged with being a fugitive from justice and to deliver such person to the agent or messenger of the demanding State or Territory. The form of the warrant is usually prescribed by the State statute, relating to fugitives from justice, and in order to be legally binding should always bear the impress of the "great seal" of the State or Territory from which it emanates, as well as the genuine signature of the governor. The absence of the seal or the failure of the governor to personally sign the warrant, is sufficient to invalidate the process itself, rendering it of no force and effect whatever, and a fugitive arrested thereunder may be discharged on *habeas corpus* because the warrant, upon its face, is void. One of the early cases holding that the impress of the "great seal" of the State was absolutely necessary to the validity of the governor's warrant, was a Missouri case, *Vallid v. Sheriff of St. Louis*, (1826), 2 Mo. 26, in that State, as in every State of the Union, there was a statutory re-

quirement that the governor's warrant of rendition should be under the "great seal," and it appeared that some attempt had been made to place the seal on the warrant, but the impression of the seal was very faint. For this reason the supreme court of Missouri, without any hesitation, declared the warrant void and discharged the alleged fugitive. Now as to the governor's signature to the warrant. In the case of *In re Tod*, (1900), 12 S. D. 386, 81 N. W. 637, 12 Am. Crim. 310, 47 L. R. A. 566, 76 Am. St. 616, it was held by the supreme court of South Dakota, that, on the governor alone, personally, devolves the duty of examining the papers and passing upon their validity. This duty cannot be delegated to another person. In this case the warrant of rendition, purporting to have been signed by the governor, was signed by some other person, and for this reason the warrant was pronounced void and the prisoner was discharged.

§ 96. **Must Be Legally Issued.**—The warrant itself, it was held by a Federal court in the case of *In re Doo Woon*, (1883), 18 Fed. 898, must bear upon its face the evidence of the fact that it was duly and lawfully issued by the executive authority of the surrendering State, and it must further show that it is based upon the demand of the governor of the demanding State and that such requisition was accompanied by a copy of an indictment found by a grand jury or an affidavit made before a magistrate, charging the fugitive with the commission of a crime in such State, otherwise the warrant is void and of no effect. One of the earlier cases, *Ex parte Thornton*, (1853), 9 Tex. 635, held to the same view, but it was left to the Supreme Court of the United States to finally settle this point, when in *Hyatt v. People ex rel. Corkran*, (1903), 188 U. S. 691, 23 Sup. Ct. 456, 47 L. ed. 657, 12 Am. Crim. 311, it was held by that court that, "a rendition warrant should not issue, unless the documents presented by the governor making the requisition, show that the accused was present in the demanding State at the time of the commission of the alleged crime,

and that he thereafter fled from such State, and sought refuge in the State upon which demand is made; and that he is lawfully charged by indictment found or by affidavit made before a magistrate and that a copy of such indictment or affidavit accompanied such requisition."

§ 97. Its Recitals Evidence of Legality of Issuance.—However, it has been declared by the court of appeals of New York in *People ex rel. Jourdan v. Donahue*, (1881), 84 N. Y. 438, that it is sufficient if the governor's warrant recites, and does not set forth in full, the indictment or affidavit upon which it is issued, and that where the papers, upon which the warrant of rendition is issued, are withheld by the executive, as in the State of New York, the warrant itself can be looked to for the evidence that the essential conditions of its issue have been fully and legally complied with in every respect. The warrant need not detail the facts, necessary to justify the detention of the alleged fugitive, with the specific certainty of a criminal pleading. In *State ex rel. Arnold v. Justus*, (1901), 84 Minn. 237, 87 N. W. 770, 55 L. R. A. 325, it is said, if it appears substantially from the body of the governor's warrant that the right to make the arrest is justified upon legal grounds, it is sufficient to authorize action of the officer to whom it is directed and to protect him in its execution.

In *Ex parte Powell*, (1884), 20 Fla. 806, it was held by the supreme court of the State of Florida, that when the governor issues a warrant of rendition for the arrest of an alleged fugitive from justice and recites in such warrant that the demanding executive produced and authenticated a copy of affidavits charging the commission of a crime, and not showing that such affidavits were made before a magistrate or judicial officer, it cannot be presumed that the affidavits were made in course of judicial proceedings for the prosecution of the person demanded and upon its face the warrant of arrest fails to show that it was authorized by law, and as a result

the executive process is declared void and the fugitive discharged.

§ 98. Who May Serve Warrant.—In the State of Illinois this warrant is specifically directed to “any sheriff, coroner or constable,” however, the governor may direct that any other designated person may execute the same—no other official in that State has the authority to make the arrest under the law—yet police officers in Chicago constantly assume the power, and armed with the governor’s warrant, go forth and arrest alleged fugitives from justice, apparently oblivious to the fact that the statutes of Illinois give them no *right* whatever to make such arrests. In the State of California and many other States police officers are specially mentioned in the warrant as authorized to execute the same, because they are so empowered by the law of such States.

§ 99. Entitled to no Greater Sanctity than Other Process.—It has been contended, with some show of sincerity, that the governor’s warrant of arrest was entitled to greater sanctity and respect, by reason of the fact that it was the rendition process of the chief executive of the State. Judge Pope, United States District Judge at Chicago, Illinois, at the hearing of that celebrated case, *Ex parte Smith*, (1842), 3 McLean, 121, replying to this very contention said:

“The court cannot assent to this distinction. This is a government of laws, which prescribes a rule of action as obligatory upon the governor as upon the most obscure officer. The character and purpose of the *habeas corpus* are greatly misunderstood by those who suppose that it does not review the acts of an executive functionary. All who are familiar with English history, must know that it was extorted from an arbitrary monarch, and that it was hailed as second Magna Charta, and that it was to protect the subject from arbitrary imprisonment by the king and his minions which brought into existence that great palladium of liberty in the latter part of the reign of Charles II. It was indeed a magnificent

achievement over arbitrary power. Magna Charta established the principles of liberty; the *habeas corpus* protected them. It matters not how great or obscure the prisoner, how great or obscure the prison-keeper, this munificent writ, wielded by an independent judge, reaches all. It penetrates alike the royal towers and the local prisons, from the garret to the secret recesses of the dungeon. All doors fly open at its command, and the shackles fall from the limbs of prisoners of state as readily as from those committed by subordinate officers. The warrant of the King and his Secretary of State could claim no more exemption from that searching inquiry, 'the cause of his caption and detention,' than a warrant granted by a justice of the peace."

§ 100. **Revocation and Alias Warrants.**—In *Work v. Corrington*, (1877), 34 Ohio St. 64, 32 Am. Rep. 345, the supreme court of the State of Ohio held that the governor of a State or Territory may, beyond all question, in case the executive warrant has been improperly issued, revoke the same, whether it has been issued by himself or by his predecessor, and even although, the fugitive from justice has been arrested and handed over to the agent or messenger of the demanding State. The supreme court of Minnesota in the State *ex rel.* Nisbett v. O'Toole, (1897), 69 Minn. 104, 72 N. W. 53, 65 Am. St. 553, 38 L. R. A. 224, adopted the Ohio view but held that the warrant could only be revoked prior to the removal of the fugitive from the surrendering State. Along the same line see *Knowlton's Case*, (1883), 5 Crim. Law Mag. 250; *Carroll's Case*, (1878), *Chicago Legal News*, Sept. 28, 1878; *Gov. Cullom's Ruling in Gaffigan and Merrick Case*, (1878), reported in *Spear on Extradition*, (3rd Ed.) 713; *In re Sultan*, (1894), 115 N. C. 57, 20 S. E. 375, 28 L. R. A. 294.

The courts have held repeatedly, and such decisions are unquestionably based on the law, that the governor of a State may issue a *second* warrant for the rendition of a fugitive from justice without another requisition from the executive of the demanding State, the first war-

rant being lost or technically incorrect. (*In re Hughes*, (1867), Phil. L. (N. C.) 57; *Ex parte Hobbs*, (1893), 32 Tex. Crim. 312, 22 S. W. 1035, 40 Am. St. 782; *Kurtz v. State*, (1886), 22 Fla. 36.)

§ 101. Rules Relating to the Governor's Warrant.—The governor's process—the warrant of rendition—in all proceedings for the arrest and surrender of fugitives from justice, is presumptive, but not conclusive evidence of the fact that the person accused is a fugitive from the justice of the demanding State, and like other presumptions may be overcome by positive proof to the contrary. (*People ex rel. Corkran v. Hyatt*, (1903), 172 N. Y. 176, 64 N. E. 825, 60 L. R. A. 774, 92 Am. St. 706.)

The warrant is *prima facie* evidence of the regularity of its issuance and is sufficient to hold the accused, until the presumption in its favor is overthrown by competent and positive testimony. (*State ex rel. Arnold v. Justus*, (1901), 84 Minn. 237, 87 N. W. 770, 55 L. R. A. 325; *Ex parte McDaniel*, (1915), — Tex. Crim. —, 173 S. W. 1018.)

Where the accused, after the issuance of the governor's warrant of rendition, sues out a writ of *habeas corpus*, to test the validity of his arrest and detention, but waives his right to produce evidence showing that he was not a fugitive from the justice of the demanding State, he is thereby concluded by the *prima facie* case made out against him by the requisition papers, and if they meet all the requirements of the Constitution and laws of the United States, will justify the surrender and removal of such person to the demanding State. (*Munsey v. Clough*, (1904), 196 U. S. 364, 25 Sup. Ct. 282, 49 L. ed. 515.)

CHAPTER XII.

THE ARREST OF THE FUGITIVE.

- § 102. The Recognized Rule.
- § 103. Arrest Before Demand, With or Without Warrant.
- § 104. Official Courtesy and Unlawful Arrests.
- § 105. Arrest From a Constitutional Viewpoint.
- § 106. Duty of Officer Making Arrest.
- § 107. Summary.

§ 102. **The Recognized Rule.**—In practically all of the States special statutes have been enacted, providing for the arrest and detention of persons charged with being fugitives from the justice of another State before the demand has been formally made by the governor of the demanding State. But the well-settled and recognized rule is that, a person charged with the commission of a felony or other crime in a certain State, fleeing to another, may, before executive demand for his arrest and return is made on the governor of that State, from which he has fled, be arrested in the State in which he is found. In such a case, he may be arrested and detained in custody for a reasonable length of time, in order to give the governor of the demanding State, an opportunity to issue a requisition for his rendition. The arrest of the alleged fugitives may be made either by virtue of a warrant issued by a magistrate, or without a warrant, by an officer or a private citizen, but in order to justify such an arrest there must be *probable cause* to believe that the crime supposed to have been committed is a felony, not a less offense, under the law of the State in which it was committed; and that the person arrested committed it and that he is a fugitive from the justice of that State. In *Cunningham v. Baker*, (1893), 104 Ala. 160, 16 So. 68, 53 Am. St. 27, it was held by the supreme court of Alabama that without the concurrence of these facts the

arrest can not be justified under any circumstances whatever. In *Malcolmson v. Gibbons*, (1885), 56 Mich. 459, 23 N. W. 166, the Michigan supreme court contended that an officer or private citizen can not justify an arrest upon the ground that he had reasonable cause to believe the person arrested had committed a felony, unless he has information of facts, derived from those reasonably presumed to know them, which, if submitted to a judge or magistrate having jurisdiction, would require the issue of a warrant of arrest, and the holding of such person in custody to await further examination. This doctrine reiterated by the supreme court of Michigan in *Filer v. Smith*, (1893), 96 Mich. 347, 55 N. W. 170. In the State of North Carolina the supreme court in *State v. Sheldon*, (1878), 79 N. C. 605, strongly held that when the matter of the arrest of the alleged fugitive from justice is regulated by statute, the statutory mode of procedure must be strictly followed, otherwise the arrest and detention is absolutely void, and the officer or citizen making such arrest does so at his own peril. The same doctrine was upheld in the following cases: *Matter of Leland*, (1869), 7 Abb. Pr. (N. S.) 64; *Ex parte Cubreth*, (1875), 49 Cal. 435; *Ex parte Thornton*, (1853), 9 Tex. 635; *In re Heyward*, (1848), 1 Sandf. (N. Y. Supp.) 702; *State v. Howell*, (1821), R. M. Charlt. (Ga.) L. 20; *Rea v. Smith*, (1856), 2 Handy (Ohio) 193; *Morrell v. Quarles*, (1860), 35 Ala. 544; *State v. Loper*, (1842), Ga. Decis. Part II, page 33.

§ 103. Arrest Before Demand With or Without Warrant.—Mr. Chief Justice Booth of the Supreme Court of Delaware in the case of *State v. Buzine*, (1845), 4 Harr. 572, in discussing the power to arrest and detain an alleged fugitive from the justice of another State found in the State of Delaware, said:

“My opinion, therefore, is that any judge or justice of the peace in this State, or the mayor of the city of Wilmington, upon probable cause, supported by oath or affirmation, has the power to issue a warrant to arrest and bring before him a party sus-

pected of having committed a crime in another State, before a demand has been made by the executive of such State, and that, after examination, upon such proof or probability of the party having committed the offense as would be sufficient to put him upon trial, it is the duty of the magistrate to commit him to prison for such reasonable time as will allow notice to be given to the executive authority of the State where the offense was committed, and a demand to be made, pursuant to the act of Congress, for the delivery of the fugitive."

The learned jurist enunciated the law clearly and forcibly, more than seventy years ago, and today his interpretation is upheld by the great weight of judicial authority throughout the United States.

In the case of *State v. Taylor*, (1898), 70 Vt. 1, 39 Atl. 447, 42 L. R. A. 672, 67 Am. St. 271, the supreme court of the State of Vermont, in speaking of the right of an officer to arrest a person without a warrant, said: "An officer may arrest without a warrant a person of whom he has reasonable cause to believe that he has committed a felony in another State. An officer in making an arrest is bound to make known the fact that he is acting as an officer but is not bound to exhibit his warrant, or in case he has one, to explain the grounds of his action, until submission has been made to his authority." The supreme court of the State of Minnesota, in *State ex rel. Arnold v. Justus*, (1901), 84 Minn. 237, 87 N. W. 770, in referring to the alleged illegality of the arrest of the accused as a fugitive from justice, declared that "this court will not, in *habeas corpus* proceedings, extend its inquisition beyond the rendition warrant of the governor to ascertain whether the prisoner had been previously unlawfully arrested or was in unlawful custody at the time such warrant was served upon him."

§104. Official Courtesy and Unlawful Arrests.—The doctrine enunciated in the last three cases cited has been strongly and forcefully repudiated by that learned jurist of Michigan, Judge Campbell, who speaking for

the supreme court of that State, in *Malcolmson v. Gibbons*, *supra*, said:

“The habit, which is by a very singular abuse of language, called official courtesy, of making illegal arrests in one jurisdiction in the hope that similar violations of law may be reciprocated, is one which cannot be tolerated. The law places private liberty at a much higher value than official favors; and violations of law by those who are appointed to protect instead of destroy private security, deserve no favor. Fundamental rules of constitutional immunity cannot be relaxed. * * * The extradition of criminals who are claimed to be fugitives from other States is governed entirely by the Constitution and laws of the United States. No State can deal with other States, under the express terms of the Constitution, without the approval of Congress and what the State cannot do its policemen cannot do. An arrest here without compliance with United States laws cannot be maintained. Michigan cannot treat foreign offenses as domestic, there is nothing in our statutes which contemplate an arrest without a warrant, for purposes of extradition.”

§ 105. **Arrest From a Constitutional Viewpoint.**—It was held in *In re Fetter*, (1852), 3 Zab. (N. J.) 311, 57 Am. Dec. 328, by the supreme court of the State of New Jersey, that under article IV, section 2, of the Constitution of the United States, the power to arrest and detain a fugitive from justice found in New Jersey, until the authorities of the State whose laws have been violated, could make the demand mentioned in said section, was clearly and unmistakably implied. In rendering the opinion of the court, the chief justice said:

“The denial of the power to arrest and detain an offender until the demand for his surrender be actually made, would, it is manifest, render the provision of the Constitution well nigh nugatory. If a person committing murder, robbery, or other high crime in one State, may, by crossing a river, or other imaginary line, avoid arrest or detention until an executive requisition and order for his surrender

may be obtained, the execution of the criminal law would be impotent indeed. Sound public policy, good faith, a fulfillment of the requirements of the Constitution, all require that the arrest and detention of the offender, be made wherever he may be found, preparatory to a demand and surrender."

The ground upon which this opinion was based by the eminent jurist is as follows:

"To enable the executive to perform this duty it is necessary that magistrates should have the power to arrest and commit the fugitive *before* as well as after a demand has been made. The exercise of the power is essential to carry into effect the provision of the Constitution; otherwise an immunity may be offered to the most atrocious criminal. If a felon, notoriously guilty of murder, can by escaping into another State set the law at defiance until a demand is regularly made on the executive, and a warrant is issued for his arrest, the object of the Constitution may be defeated and the act of Congress rendered nugatory."

The unquestioned purpose of the arrest and detention of the alleged fugitive is to comply with the mandate of the fundamental law, which commands that the accused "be delivered up, to be removed to the State having jurisdiction of the crime." This view of the law is supported by the great current of judicial decision. *Commonwealth ex rel. Schneider v. Chess*, (1911), 21 Pa. Dist. 523; *Union Pac. Co. v. Belek*, (1913), 211 Fed. 699.

§ 106. Duty of Officer Making Arrest.—It is well settled that the detention of the accused does not rest wholly with the officer making the arrest, and that he should, without unnecessary delay, take the prisoner before the proper court or judge and take the judgment of commitment from such court or judge, upon complaint in writing, submitting an inquiry as to the presumption of guilt and good faith of the officer. The value of personal liberty is too great to permit the arrest and detention of a suspected fugitive from justice upon the mere judgment of a ministerial or peace officer, and without

a hearing judicial in its nature and character. This was so held by the supreme court of the State of Indiana in *Simmons v. Vandyke*, (1894), 138 Ind. 380, 37 N. E. 973, 26 L. R. A. 33. The right to arrest and hold the alleged fugitive from justice, without a hearing, for an unreasonable time, is not sanctioned by the judicial authority to be found in the reported cases, Federal and State, on interstate rendition. As an example *In re Henry*, (1865), 29 How. Pr. (N. Y.) 185, is cited, it was there said:

“On the return of the writ no affidavits nor any other proof of the alleged larceny have been furnished, but all the information afforded rests in letters unauthorized except by the signature of the chief of police of Chicago, and the telegraphic dispatches purporting to come from him, the last dispatch indicating that a requisition had been finally obtained. Under these circumstances, I am reluctantly compelled to grant his discharge. The officers were undoubtedly authorized to make the arrest. The rule is that a private person may arrest a party, if a felony has in fact been committed, and there was reasonable ground of suspicion; but in the case of an officer he is justified in making an arrest if no felony was in fact committed, if he acted upon information from another on which he had reason to rely. This is the well settled rule in the English courts, sanctioned and followed in this State in the case of *Holley v. Mix*, (1829), 3 Wend. 350. In such case the officer acts ministerially, and is entirely justified in making the arrest, and it is a power very important to be exercised to prevent the immediate escape of felons. But he has another duty to perform. In the case where the arrest is made under a warrant, the officer must take the prisoner without any unnecessary delay before the magistrate issuing it, in order that the party may have a speedy examination if he desires it; and in case of an arrest without warrant, the duty is equally plain, and for the same reason, to take the arrested party before some officer who can take such proof as may be afforded, or if the circumstances will justify it, hold the suspected party for further examination. (Pratt

v. Hill, (1853), 16 Barb. 307.) If this is not done with reasonable diligence the party arrested can apply for a writ of *habeas corpus*, calling on the officer to show cause why he is detained, and with the return to the writ the rule is that where the arrest is upon suspicion, and without a warrant, proof must be given to show the suspicion to be well founded. (2 Inst. 52.) No such proof has been exhibited to me. The original grounds of suspicion indeed remain, and may be deemed presumptively strengthened by the last dispatch, but they contain no element of proof in the legal sense, and would not authorize me to detain him."

§ 107. **Summary.**—No one can tell when or where he or she may be arrested on the charge of being a fugitive from justice—the guilty and the innocent alike are liable to find themselves in the toils of the law—charged with the commission of crime in another State than the one in which residence is maintained. Now to summarize, this custody may be effected by three different methods as follows: First, the arrest may be made upon the authority of the governor's warrant of rendition, based on a requisition of the governor of the State, where the crime is alleged to have been committed. (Campbell v. State, (1910), 166 Ala. 33, 52 So. 399.) Second, the arrest may be made *before* demand, by virtue of a warrant, issued by a magistrate in the State where the accused is found, predicated upon a telegram, telephone message or information by letter. (Commonwealth v. Phelps, (1911), 209 Mass. 396, 95 N. E. 868.) Third, the arrest may be made by an officer or a private citizen, without a warrant, upon probable or reasonable information that the accused stands charged with a felony in the courts of the State from which he is alleged to have fled. (*In re Fetter, supra*; Dow's Case, 18 Pa. St. 37.)

CHAPTER XIII.

IDENTITY OF THE FUGITIVE.

- § 108. In Rendition Identity of Fugitive all Important.
- § 109. Identification of Fugitive in New York.
- § 110. Identification of Fugitive in Pennsylvania.
- § 111. Identification of Fugitive in Indiana.
- § 112. Identification of Fugitive in Ohio.
- § 113. Identification of Fugitive in Kentucky.
- § 114. Identification of Fugitive in Delaware.
- § 115. In Other States Fugitive Is Protected by Habeas Corpus. One Exception.
- § 116. Question of Identity, How Raised.
- § 117. In Absence of Proof Prima Facie Case Conclusive.
- § 118. Judicial Protection of the Accused.

§ 108. In Rendition Identity of Fugitive all Important.—Is the person arrested as a fugitive from justice the identical person mentioned in the governor's warrant of rendition and is he or she the same person charged with the commission of crime in the demanding State? There is absolutely no provision in the Constitution or laws of the United States to determine how this question, when raised, shall be settled. It was the evident intention of the early lawmakers to leave the question open to final adjudication by the various States. Nevertheless, this is the paramount question in the surrendering State in all rendition procedure, overshadowing and outweighing every other question that can be raised, and should be adjudicated promptly, without unnecessary delay, with a strict regard for the rights of the accused, requiring the most positive and convincing proof from the authorities of the demanding State. Johnston v. Riley, (1853), 13 Ga. 94; *In re McPhun*, (1887), 30 Fed. 57.) This rule, when rigidly enforced, safeguards the rights of the citizen and makes it practically impossible to arrest and return the wrong person. The arrest,

surrender and consequent deportation to another State, frequently far from home and friends, of some other person than the one named in the governor's warrant, is a very serious proposition and is worthy of the attention and consideration of the lawmakers of all of the States of the Union. Along this line *only* the States of New York, Pennsylvania, Indiana, Ohio, Kentucky and Delaware have each enacted statutes providing for judicial determination of the identity of the accused, after the arrest under and by virtue of the governor's warrant and before the delivery of the fugitive to the agent or messenger of the demanding State for deportation. Such statutes have been rigidly enforced in the States named, and the penalties prescribed for their violation have been sufficiently severe to guarantee their faithful observance by officials and others. The only criticism that can be offered as to these statutes, as they now appear upon the statute books of the States of New York, Pennsylvania, Indiana and Kentucky, is that while undertaking to *protect* the citizen against unlawful and unwarranted removal to another State, on the charge of crime and upon the allegation that the accused is a fugitive from justice, is the *attempted denial* by legislative enactment of other and unquestioned rights of the alleged fugitive.

§ 109. **Identification of Fugitive in New York.**—In the State of New York, before the enactment of the statute on identity of the fugitive, in the case of *People ex rel. McCoy v. Warden of the City Prison*, (1885), 3 N. Y. Crim. 370, this was an appeal by the relator, McCoy, from an order of the special term of the supreme court, denying the application of relator to be discharged from custody upon a writ of *habeas corpus*. The supreme court, general term, first department, in affirming the judgment of the lower court, Mr. Justice Daniels, speaking for the court, said: "The only questions which under the authorities seem to be open for inquiry in a case of this description, where the warrant is sufficient upon its face, as the warrant of rendition in this case appears to be, are whether the relator is the person against whom

the warrant has been issued, and whether, as a matter of fact, he is a fugitive from the justice of the State demanding his return." After the passage of the statute relating to the identification of the fugitive, another rendition case came before the general term of the supreme court on appeal, and in affirming the order of the lower court in *People ex rel. Ryan v. Conlin*, (1895), 15 Misc. (N. Y.) 303, 36 N. Y. Supp. 888, Mr. Justice Beekman, on behalf of the court, said:

"Section 827 of the Code of Criminal Procedure regulates proceedings in such cases, and requires that the prisoner arrested under the warrant of the governor shall be taken before a judge of the supreme court or of any superior city court or the presiding judge of a court of sessions, who shall inform the prisoner of the cause of his arrest and the nature of the process, and instruct him that if he claims not to be the particular person mentioned in the indictment, affidavit or warrant annexed thereto, or in the warrant issued by the governor thereon, he shall have a writ of *habeas corpus* upon filing an affidavit to that effect, and that if, after a summary hearing, as speedily as may be consistent with justice, the prisoner shall be found to be the person indicted or informed against and mentioned in the papers above referred to, then the court or judge shall order and direct the officer intrusted with execution of the warrant of the governor to deliver the prisoner into the custody of the agent designated in the requisition and the warrant issued thereon as the agent of the State from which the requisition has proceeded, otherwise he shall be discharged from custody by the court or judge. According to the letter of the statute, at least, the only question which the court can determine is the question of the identity of the fugitive with the person against whom the charge has been made, or with the person named in the warrant of the governor, and I think that, with one exception, this construction is also in accordance with the spirit of the statute and the legislative intent which led to its enactment."

The "one exception," referred to by the learned justice of the supreme court of New York, and which is second only to the question of identity, is undoubtedly the one which Mr. Justice Harlan, of the Supreme Court of the United States, in the case of *McNichols v. Pease*, (1907), 207 U. S. 110, declared was always open on *habeas corpus*, that the accused could show by competent evidence that he was not a fugitive from the justice of the demanding State, thus overcoming the presumption of a properly issued warrant of rendition. This statute in New York has prevented the removal of alleged fugitives, beyond the limits of the State, before the identity of the accused has been established, in a satisfactory and lawful manner, this was the object of the law. The attempt of the lawmakers to restrict and confine the courts on *habeas corpus*, to this question *alone*, has been declared a nullity by the highest court of New York—the court of appeals. In the case of the People *ex rel.* *Corkran v. Hyatt*, (1902), 172 N. Y. 182, 64 N. E. 825, 60 L. R. A. 774, 92 Am. St. 706, it was said in the opinion of the court by Judge Cullen that, "the provision of section 827 of the Code of Criminal Procedure, directing that any person arrested on the governor's warrant shall be brought before a judge of a court of record and informed of his right to a writ of *habeas corpus*, to inquire into his identity with the person named in the warrant, does not assume to limit the inquiry on a writ of *habeas corpus* to the question of identity. It was enacted for the benefit of any person arrested under such warrant and solely as an additional safeguard against illegal removal from the State." The decision of the court of appeals of New York in this case was affirmed by the Supreme Court of the United States, in *Hyatt v. People ex rel. Corkran*, (1902), 188 U. S. 691.

§ 110. Identification of Fugitive in Pennsylvania.—Pennsylvania has a statute almost similar to that of New York, except that the limitation to identity is made most positive. A case fully explaining this statute is that of the Commonwealth *ex rel. v. McCandlass*, (1889), 7 Pa.

Co. Ct. 51, and although this was an adjudication by the common pleas court of Alleghany county, Pennsylvania, yet the opinion of the court is regarded as an authority in that State. A certain person had been arrested in that county charged with being a fugitive from the justice of South Carolina, the accused was carried before the court and being informed as to his rights and having denied that he was the person charged with the commission of crime in the State of South Carolina. A writ of *habeas corpus* was issued upon his petition and a hearing had. In determining this case the presiding judge, Ewing, said:

“Under the provisions of the act of Assembly relative to fugitives from justice, approved May 24, 1878, P. L. 137, the sheriff arrested the alleged prisoner and brought him into court, when he was informed of his rights and of the nature of the process under which he was arrested and the charge made against him. He thereupon filed a petition for a writ of *habeas corpus*, alleging that he was not John Yeldell, but E. F. Flemon, that he was not a fugitive from justice, nor the person called for, and that the warrant of arrest was insufficient and that he was illegally detained. The writ was issued, the prisoner brought into court, a hearing had and testimony heard on part of respondent, confined, by his counsel, to the question of identity, except as other matters were incidentally brought out on examination. The act of Assembly referred to provides that ‘the investigation and hearing under said writ shall be limited to *the question of identification*.’ The act is a singular one, in this respect, that part of it which requires the officer, before delivering the prisoner arrested, to the authorities of the State demanding his rendition, to take his prisoner before the court to have him informed of the cause of his arrest and of his rights, was an addition to the former rights of the prisoner, and, had the act provided for a hearing under that provision alone, the limitation of the investigation to the question of identification might have been constitutional; but it makes no provision for such a hearing, but it goes

on to provide that he may have a writ of *habeas corpus*. This was no new right or privilege; it was an indefeasible right which he had under the Constitution, independent of an act of Assembly, and having exercised this right, he is before us with a full right to have us pass upon the legality of the arrest and holding, to the same extent and in the same manner as though the act of 1878 had no existence."

This act of May 24, 1878, like the New York statute, has generally been ignored and disregarded by the courts of Pennsylvania, so far as it restricted the rights of the accused in *habeas corpus* proceedings on interstate rendition matters. And the supreme court of that State in Commonwealth *ex rel.* v. Superintendent of Philadelphia City Prison, (1908), 220 Pa. St. 401, 69 Atl. 916, absolutely refused to pass upon the constitutionality of the act because the fugitive appellant had not been deprived of any of his rights in the hearing in the court below. Mr. Justice Mestrezat, on behalf of the court, said:

"We need not consider or determine the constitutionality of the act of May 24, 1878, P. L. 137, Purd. (13th ed.) 1761. The relator was not restricted to the proof of his identity on the hearing before the quarter sessions, but was afforded every opportunity to show the illegality of the extradition proceedings and that he was not a fugitive from justice. In other words, he was given an opportunity to controvert the jurisdictional facts which authorized the extradition proceedings, and that was all he was entitled to on *habeas corpus*. The proceedings before the quarter sessions were conducted as though the act of 1878 had no existence, and, therefore, there is no ground on which the relator can ask this court to pass upon the constitutionality of the act."

§ 111. Identification of Fugitive in Indiana.—Indiana by statute has, to some extent, guarded the rights of its citizens and residents, and at the same time afforded every opportunity to the authorities of sister States, for the arrest and return of fleeing criminals, found within the limits of that State. A person arrested by virtue of

the governor's warrant, as a fugitive from justice, in the State of Indiana, upon the demand of the executive authority of any State or Territory of the United States, shall at once be brought before a circuit or criminal court judge of the State by the officer making the arrest. The statute further provides that the court or judge before whom such alleged fugitive shall be brought shall proceed, by examination of witnesses, to ascertain if the person apprehended be the fugitive demanded and mentioned in the warrant of rendition of the governor, and if satisfied of the *identity* of the alleged fugitive; and is further satisfied that the person arrested and in custody is in truth and in fact a fugitive from the justice of the State demanding him, then such court or judge shall order the alleged fugitive to be delivered up to the agent of the State or Territory making the demand, to be transported to such State or Territory, agreeably to the laws of the United States; otherwise such alleged fugitive shall be discharged from custody. (See Burns' Annotated Indiana Statutes, (1914), Vol. 1, sections 1893, 1894 and 1899.) In *Robinson v. Flanders*, (1867), 29 Ind. 10, the supreme court of Indiana declared this statute constitutional, as it in no way ran counter to the Constitution and laws of the United States.

§ 112. Identification of Fugitive in Ohio.—Ohio is far in advance of the other States of the Union, in affording protection to its citizens, from illegal and unnecessary annoyance, incident to arrest as alleged fugitives from justice from other States. It has provided by statute, that, not only shall the *identity* of the accused be fully and satisfactorily established, but all other questions, which may be legally raised in interstate rendition proceedings on *habeas corpus*, shall also be heard and determined by a judge of the supreme court or a judge of the court of common pleas. Under that statute it is practically impossible to secure the arrest and surrender in that State of an innocent party as a fugitive from justice. No State in the Union is more careful in honoring requisitions from other States, and none more cautious in

making *demands* for the arrest and return of alleged fugitives, than is the State of Ohio; by statute, its officers in making application to the governor of that State, for the issuance of a requisition on another governor, for a fugitive's arrest and return, "such application *must* be accompanied by sworn evidence that the party charged is a fugitive from justice, that the demand or application is made in good faith, for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process and also, a duly attested copy of an indictment or an information, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same, such complaint to be accompanied by an affidavit or affidavits to the facts constituting the offense charged, by persons having actual knowledge thereof, the same shall also be accompanied by a statement in writing from the prosecuting attorney of the proper county, who shall briefly set forth all the facts of the case, the reputation of the party or parties asking such requisition, and whether, in his opinion, such requisition is sought from improper motives, or in good faith to enforce the criminal laws of Ohio, and such further evidence in support thereof as the governor may require." This statute of Ohio, known as the act of 1875, (72 Ohio L. 79), "to regulate the practice of the delivery of fugitives from justice when demanded by another State or Territory," was declared valid by the supreme court of that State in the case of *Ex parte Ammons*, (1877), 34 Ohio St. 518, the court holding that "the means by which the fugitive is *to be arrested and secured*, are not provided by the act of Congress of 1793; hence, the legislature of a State may and should provide proper and adequate means and facilities for the accomplishment of such extradition." In *Wilcox v. Nolze*, (1878), 34 Ohio St. 522, and in *Thomas v. Evans*, (1906), 73 Ohio St. 140, 76 N. E. 862, the *Ammons* case, *supra*, was cited approvingly and the right of the States to legislate in aid of interstate rendition was reiterated by the same court.

§ 113. **Identification of Fugitive in Kentucky.**—Kentucky likewise has a statute providing that when the executive authority of another State or Territory, shall demand the arrest and surrender of an alleged fugitive from justice, pursuant to the Constitution and laws of the United States, the governor of that State shall issue a warrant to the sheriff or constable of any county within the State, commanding him to arrest such fugitive and bring him before some circuit court judge for *identification*, and if satisfied of this fact the judge shall order him to be delivered up to the agent of the State or Territory demanding him, for deportation to such State or Territory agreeably to the laws of the United States; otherwise the judge shall discharge the fugitive from custody.

§ 114. **Identification of Fugitive in Delaware.**—Delaware also has a statute, similar to that of the State of Ohio, providing that a fugitive from justice arrested upon the governor's warrant of rendition, shall be brought before the chief justice or any judge of the superior court of the State, who shall forthwith proceed to hear and examine such charge and upon proof made in such examination as to the *identity* of the accused, the legality of the charge of crime, and as to his being a fugitive from the justice of the demanding State; and being satisfied of the sufficiency of the charge the chief justice or judge shall commit such alleged fugitive to the jail of the county in which such examination is so had for a reasonable time, to be fixed by the chief justice or judge in the order of commitment. Notice shall be given to the executive authority making the demand for the rendition of the fugitive, or to the duly authorized agent of such executive authority appointed to receive the fugitive. And upon payment of all costs by such agent the fugitive shall be delivered to him and thence removed to the proper place for prosecution, and if such agent does not appear within the time so fixed and pay such costs mentioned, the sheriff shall discharge the person so imprisoned.

§ 115. **In Other States Fugitive is Protected by Habeas Corpus, With One Exception.**—And thus New York, Pennsylvania, Indiana, Ohio, Kentucky and Delaware stand alone, of all the States of the Union, in providing by statute that any person arrested therein, as a fugitive from justice, by virtue of the governor's warrant of rendition or otherwise, shall forthwith be brought before the proper judge or court and the identity of the party arrested, with the person described as a fugitive, shall be satisfactorily determined by such judge or court, before the accused shall be surrendered to the authorities of the demanding State for deportation. Nevertheless, in all the remaining States, with one exception, writs of *habeas corpus* are issued, upon proper petition, by both Federal and State courts, for the protection of persons arrested as fugitives, against unlawful removal to other States. The exception referred to is the State of Arkansas. In that State there is a practical *suspension* of the writ of *habeas corpus*, in so far as an alleged fugitive from justice is concerned. And on this particular subject Arkansas and Illinois each have the same statute—word for word—in Arkansas it is so construed by the courts that it operates as a prohibition against the issuance of the writ of *habeas corpus*; while in Illinois the same statute is relied upon as authority for *doing* the very thing prohibited in Arkansas. This paradoxical situation is due largely to an interpretation, wholly disregarding of the decisions of the Supreme Court of the United States—the court of last resort in interstate rendition cases.

§ 116. **Question of Identity, How Raised.**—But how may this question of the identity of the alleged fugitive be raised on *habeas corpus*? The supreme court of the State of Washington, in the case of *Gillis v. Leekley*, (1905), 38 Wash. 156, 80 Pac. 300, in affirming a judgment of the lower court quashing a writ of *habeas corpus* for the discharge of a prisoner arrested as a fugitive from justice, very fully answered this question as follows:

“The first point urged on the appeal is that the respondent failed to establish the identity of the appellant as the person accused of crime, and named in the rendition warrant. This position is untenable for two reasons; first, because the *identity* of the appellant as the person named in the warrant was not put in issue by the pleadings. The petition for the writ simply averred that the petitioner was not guilty of the offense charged. With this question, the courts of this State have no concern. The petition utterly failed to allege that the appellant was not the person charged with the commission of the offense, and named in the extradition warrant. The warrant in due form is *prima facie* that a proper demand was made upon the executive of this State, that the appellant is the person charged with the commission of the crime and that he is a fugitive from justice. The burden of proof was upon the appellant to disprove these facts, or overthrow the presumption which arose from the production of the warrant itself.” (See *In re Charleston*, (1888), 34 Fed. 531.)

§ 117. In Absence of Proof Prima Facie Case Conclusive.—The supreme court of the State of Minnesota in the case of the State *ex rel.* Grande v. Bates, (1907), 101 Minn. 303, 112 N. W. 260, also in discussing how the identity of the fugitive could be raised on *habeas corpus*, said:

“It is further urged that there is no proof before the court of the identity of the relator as the J. H. Grande, who is charged with forgery in California. The relator has not claimed that he was not such person. The respondent, as sheriff, made return to the writ that he detained the relator under and by virtue of the warrant of the governor of this State, issued on demand of the governor of California, and the papers upon which it is based, copies of which were annexed to the return. The relator did not traverse this part of the return, although he did other portions of it; nor did he allege in his petition for the writ that he was not the person named in the warrant. While the relator might have raised

the question of his identity by his petition or traverse to the return, or perhaps, without traversing the return, the fact remains that he has not done so. He simply contents himself by asserting before this court, through his counsel, that there is no proof as to his identity, but does not even assert that he is not the party named in the warrant. See *In re Leary*, (1879), 10 Ben. (U. S.) 197. Under such circumstances the presumption arising from the identity of the name of the relator with the name in the warrant and requisition papers is sufficient *prima facie* evidence of his identity."

§ 118. Judicial Protection of the Accused.—Many years ago, when the courts were enveloped with innumerable restrictions as to the questions that could be raised on *habeas corpus*, in interstate rendition proceedings, the supreme court of the State of Vermont, in the case of *In re Greenough*, (1858), 31 Vt. 279, strongly contended that upon the question of identity being properly raised on *habeas corpus*, the court would be justified in going behind the warrant of the governor, in its determination of that question. In support of that proposition the court cited the following cases: *State v. Buzine*, (1845), 4 Harr. 572; *State v. Schlemn*, (1845), 4 Harr. 577; *State v. Daniels*, (1848), 6 Pa. L. J. 417.

The years that have intervened since these cases were decided have given additional emphasis and approval to the doctrine enunciated therein on the identity of the alleged fugitive from justice, and no longer is there the slightest doubt as to the right of the courts, on *habeas corpus*, to inquire as to whether the accused is, in reality, the same person charged with crime in the demanding State. Unless this fact is positively established by competent proof the courts, on *habeas corpus*, have not hesitated in discharging the accused. And the time is not distant when all the States will follow the example of New York, Pennsylvania, Indiana, Ohio, Kentucky and Delaware in safe-guarding their citizens against unlawful arrests and possible deportation.

CHAPTER XIV.

THE RIGHT OF ASYLUM.

- § 119. The Origin of This Doctrine.
- § 120. The First Compact. (1643).
- § 121. The Second Compact. (1670).
- § 122. The Third Compact or Articles of Confederation. (1778).
- § 123. The Fourth Compact. The U. S. Constitution. (1789).
- § 124. No Immunity From Criminal Prosecution.
- § 125. Judge Cooley on Immunity.
- § 126. An Author's Error.
- § 127. Lascelles' Case the Rule in all States.
- § 128. Method of Return Not Open to Complaint.
- § 129. A Noted Illinois Case.
- § 130. The Court's Ruling in the Lascelles' Case.
- § 131. Extradition and Rendition, the Difference.
- § 132. Courts in Accord on the Lascelles' Ruling.
- § 133. Michigan Abandons Her Former Position.
- § 134. Abuse of Power; Oppression.

§ 119. The Origin of This Doctrine.—A person who is legally charged with having committed a crime against the laws of a certain State or Territory and with being a fugitive from justice, has no right of asylum whatever, inherent or otherwise, in any State or Territory of the United States, and is, therefore, not exempt by the law from arrest for crime committed in another jurisdiction or State, prior to his return to the demanding State on rendition proceedings. (*In re Williard*, (1913), 93 Neb. 298, 140 N. W. 170.) Whatever may be said concerning this doctrine, it owes its origin to the earliest efforts at self-government of the American Colonies, and while comity and a spirit of friendship existing between the Colonies may have been responsible for the arrest and surrender of many of the fleeing criminals at that time, yet an innate desire to punish those guilty of crime, was the prime cause for denying to that class a sanctuary within the bounds of any of the Colonies. And when

the fugitive criminal fled from the scene of his crime and sought refuge in another jurisdiction, his security from arrest and final deportation, depended largely upon the activity of the officers seeking his apprehension—no barrier of any kind was thrown in the way of his immediate arrest and return to the place where the crime was originally committed and prompt punishment followed.

§ 120. The First Compact. (1643)—Long before the adoption of our present Constitution and system of government, in 1643, the Colonies of New England, for mutual benefit and protection, came together and formed a written compact for the better government of the various plantations then in combination and the earliest known written provision relating to fugitives from justice in America was the eighth article of the Confederation of the Colonies of New England, promulgated and adopted in that year, and is as follows:

“Upon the escape of any prisoner or fugitive for any criminal cause, whether by breaking prison, or getting from the officer, or otherwise escaping, upon the certificate of two magistrates of the jurisdiction out of which the escape was made that he was a prisoner or such an offender at the time of the escape, the magistrate or some of them of the jurisdiction where, for the present, the said prisoner or fugitive abideth, shall forthwith grant such warrant as the case will bear, for the apprehending of any such person, and the delivery of him into the hands of the officer or other person who pursueth him; and if there be help required for the safe returning of any such offender, then it shall be granted unto him that craves the same, he paying the charges thereof.” (Hazard, *Hist. Coll.* vol. 2, p. 5; Winthrop, *Hist. Mass.* vol. 2, p. 101.)

This compact, for such it was, grew out of the fact that the Colonies of New England were contiguous to each other, and it had been a common thing for criminals to flee from one Colony to another in order to avoid arrest and punishment for crimes committed. The jurisdiction of each Colony was confined to its own territory,

and no criminal, prior to the adoption of this article, could be arrested in nor surrendered from a Colony, except by a stretch of comity existing between the officials of such Colonies. In order to avoid just such a condition and to insure the arrest and surrender of fugitive criminals in the act of fleeing from justice, and that punishment for crimes committed might be sure and certain, this article, binding alike upon all the Colonies, was framed and became operative, accomplishing the purpose intended that no such fugitive from justice should find a place of asylum in any of the Colonies. At once this principle became fundamental and its strict enforcement has been a characteristic of succeeding generations, and now looking back after a lapse of two hundred and seventy years, the provisions of this article are of great interest, because it is the forerunner of the organic law on interstate rendition. Its language is plain and unmistakable, no discretion is given, either expressly or by implication, to any of the officials of the Colony on which the demand is made, but upon the production of the certificate of two magistrates a warrant should be issued for the apprehension of the fugitive and his surrender to the proper officer or person "who pursueth him," and his subsequent removal or "safe returning" to where the crime was committed.

§ 121. The Second Compact. (1670)—In 1670 a new set of articles were formed between the Colonies, and this agreement, relating to fugitives from justice, was continued with slight modification, instead of two magistrates being required to certify to the escape of the fugitive only one magistrate's certificate was necessary. With this simple change the new article was as follows:

"Upon the escape of any prisoner whatsoever, or fugitive for any criminal case, whether breaking prison, or getting from the officer, or otherwise escaping, upon the certificate of one magistrate of the jurisdiction out of which the escape is made, that he was a prisoner, or such an offender at the time of the escape, the magistrates, or some of them of

that jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a warrant as the case will bear for the apprehending of any such person, and the delivering of him either into the hands of the pursuer; and if help be required it shall be granted, he paying the charges thereof." (Rec. Mass. Colony, vol. 4, p. 473.)

This article, without alteration or amendment, remained in full force and effect for a period of one hundred and seven years, unquestionably giving entire satisfaction to the people.

§ 122. The Third Compact or Articles of Confederation. (1778)—However, when the Colonies in 1778, assumed the title of "The United States of America," and Congress proposed the Articles of Confederation, as "a firm league of friendship with each other," and a "perpetual union," and the same was adopted by the thirteen legislatures, it was found that the "fugitive article" of 1670 had given place to the following provision on this subject:

"If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice and be found in any of the United States, he shall, upon the demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense." (Articles of Confederation and Perpetual Union, 1778, art. IV, sec. 2.)

The adoption of this provision in the place of the article of 1670, marked the *end* of the judicial demand for the arrest and surrender of the criminal fugitive, and eliminated petty crimes from the list for which rendition could be asked and confined such demands to "treason, felony, or other high misdemeanor." Since 1643, a period of one hundred and thirty-five years, it had been only necessary, in order to set in motion the machinery of intercolonial rendition, to secure the required certificate from the proper judicial officer in the demanding Colony of the facts, which made the accused an abscond-

ing criminal, and wherever found a warrant was at once issued for his arrest and delivery. This method gave unlimited control to a Colony over persons beyond its own jurisdiction and aided in the swift enforcement of the criminal law. Abuses no doubt had crept into the system and oppression had been the result, so that when the new articles were suggested it was thought best, in order to safeguard the rights of the citizen, the governor of a Colony, a newly elective officer and supposed to be more experienced than the ordinary "magistrate," was invested with the power to make such demand for the rendition of fugitives from justice.

§ 123. The Fourth Compact. The U. S. Constitution. (1789)—In 1789, the Constitution was adopted by the thirteen States, supplanting the Articles of Confederation, and the new clause relating to interstate rendition was as follows:

“A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.” (Constitution of the United States, art. IV, sec. 2, par. 2.)

Whatever of power was originally possessed by the Colonies and afterwards by the States, pertaining to the right to arrest and surrender fugitives from justice, charged with the commission of crime in one Colony or State, and fleeing into another, has been by this provision of the Constitution delegated solely to the United States, with absolutely no reservation whatever. The United States as a separate and independent government was formed when the States adopted the Constitution, and such power as was not, specifically or by implication, delegated to the general government is reserved to the individual States. All power was given by the States in the organic law to the general government over interstate rendition. It is true that nearly every State of the Union has passed auxiliary legisla-

tion on this subject and many of the State supreme courts have upheld the right of the States to so legislate, provided always that such statutes are not inconsistent in any respect with the Federal law; however, the Supreme Court of the United States denied this right in *Prigg v. Commonwealth of Pennsylvania*, (1842), 16 Pet. 539, but this denial has had no effect upon the States for the reason that the opinion in one sense was extrajudicial, as that question was not properly before the court, and Mr. Justice Story, speaking for the court, had no authority to so rule on that subject and hence, the language of the opinion relating thereto is without any controlling force whatever.

§ 124. **No Immunity from Criminal Prosecution.**—But to resume the inquiry into the so-called right of asylum of criminals, fleeing from one local jurisdiction to another, it should not be forgotten that the first compact or agreement on this subject by the American Colonies, in 1643, no thought or suggestion was ever entertained that, any person charged with the commission of a crime against the laws of a Colony, should find anything like immunity from criminal prosecution, or avoid punishment for crimes committed, by fleeing to another Colony. Freedom from arrest in the asylum Colony and exemption from return to the place where the crime was committed, was never contemplated, even by the most sparsely settled and remotest Colony. (*Williams v. Webber*, (1891), 1 Colo. App. 191.) It was the policy of America's earliest lawmakers to see to it that the method of enforcing the criminal law and the punishment for crime should be certain and positive in every Colony, and unhampered by the technical rules of the common law. The agreement for the extension of criminal jurisdiction over fugitives found in another Colony, was primarily entered into in 1643 and 1670 by the individual Colonies, for the very purpose of emphasizing the *denial* of the "right of asylum," early claimed as an inherent privilege of every colonist, and which had proven, too often, a loophole for the escape of the guilty. Whatever of force and effect

this doctrine may have had in the old world, as between independent and sovereign nations, it soon was a settled principle in the Colonies of America, that, no such exemption should apply to a person charged with crime committed in this country, in whichever Colony he might afterwards be found. Much confusion, on this particular subject, had grown out of the fact that decisions of a few State courts held that no distinction existed between international extradition and interstate rendition, so far as they related to the right of the fugitive criminal, to be tried *only* for such crime in the demanding State, upon which he had been apprehended and surrendered in the asylum State, and upon acquittal or after punishment and discharge from custody for the one specific offense, then to be given the privilege of a reasonable time to return to his domicile or the asylum State.

§ 125. **Judge Cooley on Immunity.**—Holding to this view may be mentioned that eminent jurist and author, Judge Cooley, who, in an able and well-written article in the Princeton Review, January 1879, contended as a matter of law and in strict compliance with the Constitution of the United States, every person charged with being a fugitive from the justice of one State and fleeing to another, and being surrendered for one crime is exempt from prosecution upon another. The force of his masterly exposition of this view of the law has been generally regarded with little less than absolute authority. Dr. Spear in the "Law of Extradition," 3rd ed., (1885), pages 525 to 571, fully sustained the position taken by Judge Cooley in a lucid and exhaustive argument, covering two chapters of his book. One of the earliest cases having to do with this exemption, claimed for fugitive criminals, cited by Dr. Spear, is the Daniel's Case, (1848), Binn's Justice, 8th ed., page 439, which was heard by Judge Parsons, of the quarter sessions of Philadelphia, Pennsylvania, wherein the court held that where a person is brought into a State as a fugitive from justice, after acquittal, or conviction and pardon, he cannot be surrendered to the authorities of another State as a

fugitive, but must be allowed an opportunity to return to the State in which he is domiciled. In the Matter of Cannon, (1882), 47 Mich. 481, 11 N. W. 280, Judge Campbell, of the supreme court of the State of Michigan, with great earnestness and ability, in an opinion often quoted, held that the returned fugitive should be protected from prosecution for any other offense, with which he may be charged, in the demanding jurisdiction, until he has reasonable time to leave the State. The supreme court of the State of Kansas followed closely the reasoning and adopted the doctrine as enunciated by Judge Campbell in the Cannon Case, *supra*, in a case which attracted considerable attention at that time, the State v. Hall, (1888), 40 Kan. 338, 19 Pac. 918, with the single reservation that the fugitive is not protected from prosecution, where the offense constitutes one continuous course of crime. The supreme court of the State of Ohio in *Ex parte McKnight*, (1891), 48 Ohio St. 588, 28 N. E. 1034, 14 L. R. A. 128, practically upheld the Michigan doctrine as interpreted by Judge Campbell.

§ 126. **An Author's Error.**—It is to be regretted that such a distinguished author and jurist as Judge Bailey, in his latest work, (1913), on Habeas Corpus, vol. 1, page 534, in discussing "interstate extradition," should fall into the error of classing Indiana with Michigan, Kansas and Ohio, as subscribing judicially to the "right of asylum" doctrine, as enunciated by Judge Cooley, and citing as his authority for so doing, *Waterman v. State*, (1888), 116 Ind. 51, 18 N. E. 63; and *Musgrave v. State*, (1893), 133 Ind. 297, 32 N. E. 885; when in truth and in fact, the supreme court of the State of Indiana in the course of its opinion in the latter case, said, "We are not prepared to *assent* to the doctrine of counsel that a party brought into this State upon a requisition based upon an indictment charging one offense may not be here tried for a different offense." The earlier case of *Hackney v. Welsh*, (1886), 107 Ind. 253, 8 N. E. 141, 57 Am. Rep. 191, 36 L. R. A. 488, clearly establishes the fact that the supreme court of that State had long been *against* the

Cooley doctrine, and in the latest case on that subject, *Knox v. State*, (1905), 164 Ind. 226, 73 N. E. 255, 108 Am. St. 291, 3 Ann. Cas. 539, that court found itself in perfect harmony with the ruling of the Supreme Court of the United States in *Lascelles v. Georgia*, (1893), 148 U. S. 543, 13 Sup. Ct. 687, 37 L. ed. 549, without being forced to overrule any of its former decisions.

§ 127. **Lascelles' Case the Rule in all States.**—It may be noted that Ohio, Michigan and Kansas, in later cases, fell in line with the ruling in the *Lascelles'* case, see *In re Brophy*, (1895), 2 Ohio N. P. 230, 4 Ohio Dec. (N. P.) 391; *In re Little*, (1902), 129 Mich. 454, 89 N. W. 38; *In re Flack*, (1913), 88 Kan. 616, 129 Pac. 541, 47 L. R. A. (N. S.) 807, overuling *State v. Hall*, *supra*. See also *State v. Dunn*, (1903), 66 Kan. 483, 71 Pac. 811; *State v. McNaspy*, (1897), 58 Kan. 691, 50 Pac. 897, 38 L. R. A. 756; *State v. Walker*, (1894), 119 Mo. 467, 24 S. W. 1011; *State v. Patterson*, (1893), 116 Mo. 505, 22 S. W. 696. *Taylor v. Commonwealth*, (1906), 29 Ky. L. R. 96 S. W. 440.

It will be observed at a glance that the views as expressed by Judge Cooley and Dr. Spear and upheld by the decisions of the courts of Ohio, Michigan and Kansas, coincide with the right of asylum, as generally understood in international law, with the practice of separate and independent nations in extradition cases under treaties and with the specific rules of the common law exempting suitors and witnesses from abuse of judicial process. And thus reasoning by analogy, it is but natural that the conclusion should have been reached by them, that the principles governing international extradition under treaties by sovereign nations and rendition between separate States, under the Constitution and laws of the United States, were, in this essential, *one and the same*. For a time it was contended that the opinion of the Supreme Court of the United States in *United States v. Rauscher*, (1886), 119 U. S. 407, sanctioned this view, but a calmer and more dispassionate consideration of the whole subject has dispelled that doubt.

§ 128. Method of Return to State not Open to Complaint.—One year subsequent to the decision, in the case just referred to, the Federal Supreme Court was again called upon to render an opinion on another phase of this so-called asylum doctrine. One Mahon was indicted for murder in the State of Kentucky but before his arrest he fled to the State of West Virginia. The governor of the former State by requisition demanded of the executive of the latter State the arrest and surrender of Mahon as a fugitive from justice, this demand, for some reason was refused. Whereupon the agent of Kentucky with other citizens of his State, by force took possession of Mahon and brought him back to Kentucky. The chief executive of West Virginia demanded of the governor of Kentucky the return of Mahon, this also was refused; thereupon the governor of West Virginia sued out a writ of *habeas corpus* in the Federal court of Kentucky, praying for the discharge of Mahon, alleging that his (Mahon's) then detention in Kentucky was unlawful because he had not been removed from West Virginia in accordance with the Constitution and laws of the United States. Upon a hearing the writ was quashed and the petition was dismissed the court holding that Mahon was lawfully held in custody in Kentucky. *In re Mahon*, (1887), 34 Fed. 525. An appeal was taken to the Supreme Court of the United States and after due consideration the judgment of the lower court was affirmed, *Mahon v. Justice*, (1887), 127 U. S. 714, 8 Sup. Ct. 1204, 32 L. ed. 283, in the course of an able opinion the court used this language:

“So in this case, it is contended that, because under the Constitution and laws of the United States a fugitive from justice from one State to another can be surrendered to the State where the crime was committed, upon proper proceedings taken, he has the right of asylum in the State to which he has fled, unless removed in conformity with such proceedings, and that this right can be enforced in the courts of the United States. But the plain answer to this contention is, that the laws of the United States do

not recognize any such right of asylum, as is here claimed on the part of a fugitive from justice in any State to which he has fled; nor have they, as already stated, made any provision for the return of parties, who, by violence and without lawful authority, have been abducted from a State. There is therefore, no authority in the courts of the United States to act upon any such alleged right."

Ten years after the Mahon case had been decided, the United States Supreme Court in the case of *In re Johnson*, (1897), 167 U. S. 120, though not a rendition case, again proclaimed its adherence to the doctrine enunciated in the former case and Mr. Justice Brown, speaking for the court said:

"We know of no reason why the rule, so frequently applied in cases of conflicting jurisdiction between Federal and State courts, should not determine this question. Ever since the case of *Ableman v. Booth*, (1858), 21 How. 506, it has been the settled doctrine of this court that a court having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction is exhausted, and that no other court has the right to interfere with such custody or possession. This rule was reaffirmed in *Tarble's Case*, (1871), 13 Wall. 397; in *Robb v. Connolly*, (1883), 111 U. S. 624; and *In re Spangler*, (1863), 11 Mich. 298.

"Indeed, there are many authorities which go to the extent of holding that, *in criminal cases*, a forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense and presents no valid objection to his trial in such court. *Ker v. Illinois*, (1886), 119 U. S. 436; *Ex parte Scott*, (1829), 9 B. & C. 446; *Lopez & Sattler's Case*, (1858), 1 Dearsly & Bell's Crown Cases, 525; *State v. Smith*, (1829), 1 Bailey So. Car. Law, 283; *State v. Brewster*, (1835), 7 Vt. 118; *Dow's Case*, (1851), 18 Pa. St. 37; *State v. Ross & Mann*, (1866), 21 Iowa, 467. Although it has been frequently held that if a defendant *in a civil*

case be brought within the process of the court by a trick or device, the service will be set aside and he will be discharged from custody. *Union Sugar Refinery v. Mathiessen*, (1864), 2 Cliff, 304; *Wells v. Gurney*, (1864), 8 B. & C. 769; *Snelling v. Watrous*, (1830), 2 Paige, 314; *Williams v. Bacon*, (1834), 10 Wend. 636; *Metcalf v. Clark*, (1864), 41 Barb. 45; *Stein v. Valkenhuysen*, (1858), 3 B. & E. 65, 96 English Common Law, 65; *Williams v. Reed*, (1862), 5 Dutcher, 385; *Carpenter v. Spooner*, (1850), 2 Sand. 717; *Pfiffner v. Krapfeller*, (1869), 28 Iowa, 27; *Moynahan v. Wilson*, (1877), 2 Flipp. 130; *Small v. Montgomery*, (1883), 17 Fed. 865; *Kauffman v. Kennedy*, (1885), 25 Fed. 785.

§ 129. **A Noted Illinois Case.**—In a prior case, *Ker v. Illinois*, (1886), 119 U. S. 436, 7 Sup. Ct. 225, 30 L. ed. 421, one Ker had been kidnapped and brought from Peru, one of the countries of South America, charged with embezzlement, and upon his arrival in Chicago, Illinois, Ker sought to obtain his freedom upon the ground that he had been unlawfully and against his will brought to the United States, Judge Drummond of the United States circuit court of Illinois, refused a writ of *habeas corpus* on the ground that the method of his return was not subject to inquiry. *Ex parte Ker*, (1884), 18 Fed. 167. The supreme court of Illinois also held that however illegal may have been the manner of his capture and return to that State, that when once within its jurisdiction, no inquiry would be made as to the lawfulness of such arrest and return. The process by which Illinois then held Ker was *alone* subject to judicial investigation. *Ker v. People*, (1886), 110 Ill. 637, 51 Am. Rep. 706. This case was finally reviewed by the Supreme Court of the United States and the judgment of the Illinois court was affirmed. *Ker v. Illinois*, (1886), *supra*. This view has been sustained in the following decisions: *State v. Ross*, (1866), 21 Iowa, 467; *Hall v. Patterson*, (1891), 45 Fed. 352; *In re Miller*, (1885), 23 Fed. 23; *Ex parte Barker*, (1888), 87 Ala. 4, 6 So. 7, 8 Am. Crim. 236; *Elmore v. State*, (1885), 45 Ark. 243; *State v. Fitzgerald*,

(1892), 51 Minn. 534; *People v. Pratt*, (1889), 78 Cal. 345, 20 Pac. 731; *State v. Day*, (1882), 58 Iowa, 678; *In re Miles*, (1880), 52 Vt. 609.

The Mahon case, the Ker case and the cases cited all uphold and sustain the old common law doctrine that the jurisdiction of the court in which the indictment is found is not impaired by the method used to bring the accused before it, as was enunciated in the early case of *Ex parte Scott*, (1829), 9 B. & C. 446. The same doctrine was announced and sustained by the supreme court of Kansas in the case of *In re Fowles*, (1913), 89 Kan. 430, 131 Pac. 598.

§ 130. The Court's Ruling in the Lascelles' Case.—The Lascelles' case, which finally and conclusively settled this question adversely to the Cooley doctrine, had been originally heard in the superior court of Floyd county, Georgia, in 1891. Lascelles was arrested in and brought from the State of New York to Georgia, on one charge and when he arrived in Georgia was arraigned and tried on another charge. By a motion to quash the indictment and a plea in abatement, he contended that it was unlawful to try him on the second charge without giving him an opportunity to return to the State of New York, which had surrendered him. This motion the lower court overruled, and Lascelles prayed an appeal to the supreme court of the State of Georgia, which unanimously affirmed the judgment of the court below, *Lascelles v. State*, (1891), 90 Ga. 347, 16 S. E. 945, 34 Am. St. 216. Thereupon the case was carried to the Supreme Court of the United States for final adjudication, *Lascelles v. Georgia*, (1893), *supra*, and that court found no error in the record or proceedings from the Georgia supreme court, and Mr. Justice Jackson, in delivering an opinion of affirmance, said:

“This proposition assumes, as is broadly claimed, that the States of the Union are independent governments, having the full prerogatives and powers of nations, except what have been conferred upon the general government; and not only have the right to

grant, but do, in fact, afford to all persons within their boundaries an asylum as broad and secure as that which independent nations extend over their citizens and inhabitants. Having reached, upon this assumption or by this process of reasoning, the conclusion that the same rule should be recognized and applied in interstate rendition as in foreign extradition of fugitives from justice, the decision of this court in *The United States v. Rauscher*, (1886), 119 U. S. 407, *et seq.*, is invoked as a controlling authority on the question under consideration. If the premises on which this argument is based were sound, the conclusion might be correct. But the fallacy of the argument lies in the assumption that the States of the Union occupy towards each other, in respect to fugitives from justice, the relation of foreign nations, in the same sense in which the general government stands towards independent sovereignties on that subject; and in the further assumption that a fugitive from justice acquires in the State to which he may flee some State or personal right of protection, improperly called a right of asylum, which secures to him exemption from trial and punishment for a crime committed in another State, unless such crime is made a special object or ground of his rendition. This latter position is only a restatement, in another form of the question presented for our determination. The sole object of the provision of the Constitution and the act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of a State, whose laws they are charged with violating. Neither the Constitution nor the act of Congress providing for the rendition of fugitives upon proper requisition being made, confers, either expressly or by implication, any right or privilege upon such fugitives under and by virtue of which they can assert, in the State to which they are returned, exemption from trial for any criminal act done therein. No purpose or intention is manifested to afford them any immunity or protection from trial and punishment for any offenses committed in the State from which they flee. On the contrary, the

provision of both the Constitution and the statutes extends to *all* crimes and offenses punishable by the laws of the State where the act is done. *Kentucky v. Dennison*, (1860), 24 How. 66, 101, 102; *Ex parte Reggel*, (1885), 114 U. S. 642.

“It would be a useless and idle procedure to require the State having the custody of the alleged criminal to return him to the State by which he was rendered up in order to go through the formality of again demanding his extradition for the new or additional offenses on which it desired to prosecute him. The Constitution and laws of the United States impose no such condition or requirement upon the State. Our conclusion is that, upon a fugitive’s surrender to the State demanding his return in pursuance of national law, he may be tried in the State to which he is returned for any other offense than that specified in the requisition for his rendition, and that in so trying him against his objection, no right, or privilege, or immunity secured to him by the Constitution and laws of the United States is thereby denied. It follows, therefore, that the judgment in the present case should be affirmed.”

§ 131. Extradition and Rendition, the Difference.—

The able Associate Justice in the course of his opinion, from which this excerpt is taken, in referring to the error into which many courts, Federal and State, have fallen when discussing the so-called similarity between foreign extradition and interstate rendition, said: “To apply the rule of international or foreign extradition, as announced in *United States v. Rauscher*, (1886), *supra*, to interstate rendition involves the confusion of two essentially different things, which rest upon entirely different principles. In the former the extradition depends upon treaty contract or stipulation, which rests upon good faith, and in respect to which the sovereign upon whom the demand is made can exercise discretion, as well as investigate the charge on which the surrender is demanded, there being no rule of comity under and by virtue of which independent nations are required or expected to withhold from fugitives within their jurisdic-

tion the right of asylum. In the matter of interstate rendition, however, there is the binding force and obligation, not of contract, but of the supreme law of the land, which imposes no conditions or limitations upon the jurisdiction and authority of the State to which the fugitive is returned." The cases cited in this opinion are the following: *In re Noyes*, (1878), 17 Alb. L. J. 407; *Ham v. State*, (1878), 4 Tex. App. 645; *State ex rel. Brown v. Stewart*, (1884), 60 Wis. 587, 19 N. W. 429; *People ex rel. Post v. Cross*, (1892), 64 Han. 348, 32 N. E. 246, 135 N. Y. Supp. 536; *Commonwealth v. Wright*, (1893), 158 Mass. 149, 33 N. E. 82; *In re Miles*, (1875), 52 Vt. 609.

§ 132. Courts in Accord on the Lascelles' Ruling.—The courts with one accord have adopted the doctrine as announced in the opinion in the Lascelles' case by the Supreme Court of the United States and no longer regard the "right of asylum" as a principle applicable to interstate rendition, so far as the same applies to the States and Territories of the Union, as will be observed from the following decisions: *Reid v. Ham*, (1893), 54 Minn. 305, 56 N. W. 35; *Carr v. State*, (1893), 104 Ala. 43, 16 So. 155; *State v. Glover*, (1893), 112 N. C. 896; *In re Fitton*, (1893), 55 Fed. 273; *State v. Kealy*, (1893), 89 Iowa 94, 56 N. W. 283; *Baker v. State*, (1894), 88 Wis. 147, 59 N. W. 572; *In re Moore*, (1896), 75 Fed. 822; *State ex rel. Petry v. Leidigh*, (1896), 47 Neb. 126, 66 N. W. 510, 12 Am. Crim. 343; *In re Lawrence*, (1897), 80 Fed. 103; *State v. Wine*, (1897), 7 N. D. 18, 72 N. W. 905; *In re Walker*, (1901), 61 Neb. 814, 86 N. W. 510, 12 Am. St. 342; *In re Little*, (1902), 129 Mich. 454, 89 N. W. 38; *Knox v. State*, (1905), 164 Ind. 226, 73 N. E. 255; *Taylor v. Commonwealth*, (1906), 29 Ky. Law, 714, 96 S. W. 440; *Rutledge v. Krauss*, (1906), 73 N. J. L. 397, 63 Atl. 988; *In re Flack*, (1913), 88 Kan. 616, 129 Pac. 541, 32 Ann. Cas. 789; *People v. Strosnider*, (1915), 264 Ill. 435.

§ 133. Michigan Abandons Her Former Position.—By reason of Judge Campbell's strong opinion in the Matter

of Cannon, (1882), *supra*, favoring Judge Cooley's doctrine, to which reference has been made, Michigan, had generally been known as a State ready to defend the "right of asylum," under certain conditions; but it is now a noticeable fact that the supreme court of that State, in the latest adjudication on that subject, in *In re Little*, (1902), *supra*, used this language in setting itself right on the "right of asylum" doctrine, "Due protection to society against criminals forbids that they should be privileged from arrest for crimes and opportunity given them to escape. A criminal acquires no 'right of asylum' in a State to which he has fled."

§ 134. **Abuse of Power; Oppression.**—While there can be no possible doubt as to the force and effect of the Constitution and act of Congress of 1793, conferring upon the authorities of the several States and Territories the power to arrest and surrender, upon proper demand, interstate criminals or fugitives from justice, found in the asylum State or Territory; to try the accused in the demanding State for a crime or crimes not mentioned in the requisition; to surrender such accused person to a third State, upon demand, after his trial, punishment and discharge in the demanding State, *without* offering him an opportunity to return to the place of his original arrest; nevertheless, there is a well-defined and constantly increasing sense of honor in many of the States of the Union, which revolts at this procedure, when carried to the limit, regarding such extraordinary power, entrusted to public officials, as liable to abuse, dangerous to the personal liberty of the ordinary citizen, and often resulting in the oppression of the weak and friendless. In consequence of this growing sentiment *nisi prius* judges, in many of the States, have been known, in *habeas corpus* proceedings, to discharge the fugitive, believing that fair play and justice demanded it, regardless of the strict letter of the law.

CHAPTER XV.

EXEMPTION FROM SERVICE OF CIVIL PROCESS.

§ 135. Origin of Right.

§ 136. Returned Fugitive and Civil Process.

§ 137. Induced by Fraud to Return and Civil Process.

§ 138. Suitors and Witnesses Entitled to Immunity.

§ 139. The Exemption as Viewed by the Court of Appeals of New York.

§ 135. Origin of Right.—There still remains another interesting feature to the immunity doctrine, relating to exemption from service of civil process, on persons required to leave their homes to attend courts in distant localities, to defend or protect certain property rights or testify in civil actions. The origin of this right dates back to the hazy period of our jurisprudence, and comes to us sanctioned by a judiciary noted for learning and wisdom, and is now thoroughly recognized as an essential privilege to the enjoyment of “life, liberty, and the pursuit of happiness.” Any effort towards the abridgment of this right or any other substantial right of the people, has uniformly met with stern opposition from the judiciary, both State and Federal, and today the exemption from service of civil process, under such conditions, is as permanently fixed as any other fundamental principle safe-guarding the liberty and property of the citizen. In this connection two very important subjects frequently arise in interstate rendition proceedings, and the decisions of the courts relating thereto, have set at rest all doubt as to the soundness of the judicial determination of these questions.

First.—Can an alleged fugitive from justice brought into a State upon a requisition be there served with process in a civil suit, before he has had an opportunity to return to the State from which he was originally sur-

rendered? Second.—Can a person, who is fraudulently induced to come within a State, so as to render himself or his property amenable to the jurisdiction of its courts, be there served with process in a civil action?

§ 136. **Returned Fugitive and Civil Process.**—The answer to the first question is affirmatively sustained by the great weight of authority, the courts of Ohio, Wisconsin and possibly Michigan holding to the reverse; nevertheless, the following rule has been recognized and accepted as the law and by it the courts have been almost universally guided—that a person brought within the limits of the demanding State, on a criminal charge as a fugitive from justice, as a *mere pretext* for the purpose of proceeding against him in a civil action in that State, cannot be arrested and held in such action at the suit of any party, who was concerned in such an abuse of a legal process. The charge of crime and other procedure incident to his rendition all being tainted with fraud, the courts have held, where a hearing discloses this state of facts, that a party or parties to such fraud shall in no way derive any advantage therefrom. (Wells v. Gurney, (1828), 8 Barn. & Cresw. 769; Commonwealth v. Daniel, (1847), 4 Clark, 49; Carpenter v. Spooner, (1850), 2 Sandf. 717; Benn v. Oswell, (1860), 37 How. Pr. 235; Metcalf v. Clarke, (1864), 41 Barb. 45; Adriance v. Lagrave, (1873), 59 N. Y. 110; Browning v. Abrams, (1876), 51 How. Pr. 172; People *ex rel.* Watson v. Judge of the Superior Court of Detroit, (1879), 40 Mich. 729; Townsend v. Smith, (1879), 47 Wis. 623; Compton v. Wilder, (1883), 40 Ohio St. 130; Moletor v. Sinnen, (1890), 76 Wis. 308, 44 N. W. 1090, 20 Am. St. 71, 7 L. R. A. 817; *In re* Walker, (1901), 61 Neb. 803, 86 N. W. 510; Murray v. Wilcox, (1904), 122 Iowa, 188, 91 N. W. 1087, 101 Am. St. 263, 64 L. R. A. 534; Rutledge v. Krauss, (1906), 73 N. J. L. 397, 63 Atl. 988; Dauber v. Dalzell, (1888), 10 Ohio Dec. 227, 19 Weekly Law Bul. 269, it was held that one who is surrendered to a neighboring State cannot be served with a summons in a civil action while passing through Ohio on his way home by

the party who caused his original rendition. In a very late case, *State ex rel. Hattabaugh*, (1909), 140 Wis. 89, the supreme court of the State of Wisconsin held that, a person brought into that State on rendition, based on a criminal charge, is not subject to arrest on a judgment in a civil case.

§ 137. Induced by Fraud to Return and Civil Process.

—The second question now merits some consideration. The supreme court of the State of Illinois, many years ago, in *Wanzer v. Bright*, (1869), 52 Ill. 35, fully realizing the fact that it would be intolerable if the law afforded no remedy for such a deliberate and successful fraud, enforced and carried out by the abuse of legal process, whereby one would be damaged and another profited unjustly thereby; in affirming the judgment of the lower court, where damages had been awarded for such abuse of process, as well as answering this question in the negative, that court held that, “no court will take jurisdiction of a party where it is obtained by fraud; nor is a defendant amenable to process unless he is in, or comes voluntarily within, the territorial jurisdiction of the court. Even a valid and lawful act can not be accomplished by such unlawful means as enticing a party by fraud to come within the jurisdiction of the court so as to subject him to its process. And where a party has been fraudulently induced to come within the jurisdiction of a court so as to render him or his property amenable to its process, he may have his action therefor.” In assuming that one so inveigled into the State and there served with process in a civil cause and such service being regarded as legal, the court said: “The pure fountains of justice can never be so polluted. The courts were created for the administration of justice, and they and their process can never be used for the purpose of oppression and to perpetrate fraud and wrong, or their process fraudulently obtained and employed to enforce a right, however just and legal.” This is the law in every State of the Union, and is founded upon those principles of right and justice which have been so closely guarded

by the judiciary, from the beginning of the government, to the present day, as will be seen from an examination of the following cases: *Williamson v. Bacon*, (1834), 10 Wend. 636; *Underwood v. Fetter*, (1848), 6 N. Y. Leg. Obs. 66; *Hill v. Goodrich*, (1858), 32 Conn. 588; *Allen v. Miller*, (1860), 11 Ohio St. 374; *Reed v. Williams*, (1862), 29 N. J. L. 385; *Dunlap v. Cody*, (1871), 31 Iowa, 260; *Oley v. Brown*, (1875), 5 How. Pr. 92; *Rosenthal v. Circuit Judge*, (1893), 98 Mich. 208; *Beacon v. Rogers*, (1894), 79 Hun. 220, 29 N. Y. Supp. 507. And *Wanzer v. Bright*, (1869), *supra*, wherein the supreme court of Illinois enunciated *the law* on this subject, is cited approvingly in these cases: *Cook v. Brown*, (1878), 125 Mass. 503; *Wood v. Wood*, (1880), 78 Ky. 624; *Cavanaugh v. Smith*, (1882), 84 Ind. 384; *VanHorn Bros. v. Great Western Mfg. Co.*, (1887), 37 Kan. 526; *In re Robinson*, (1890), 29 Neb. 137, 8 L. R. A. 399, 26 Am. St. 259; *Heinekamp v. Beaty*, (1891), 74 Md. 395, 21 Atl. 1098; *Sweet v. Kimball*, (1896), 166 Mass. 332, 44 N. E. 243, 55 Am. St. 406; *Saveland v. Conners*, (1904), 121 Wis. 30, 98 N. W. 933; *Paine v. Kelley*, (1907), 197 Mass. 23, 83 N. E. 8; *Weale v. Clinton*, (1909), 158 Mich. 563; *Consouland v. Rosomano*, (1910), 176 Fed. 481; *In re Taylor*, (1908), 29 R. I. 131; *In re Henderson*, (1914), 27 S. D. 155, 145 N. W. 574.

§ 138. Suitors and Witnesses Entitled to Immunity.—

The remaining class entitled to immunity from arrest and restraint, during the actual performance of a duty enjoined by law, is suitors and witnesses, who are required to leave their homes and attend court in another and foreign jurisdiction. This rule comes from the common law and the privilege is guaranteed to the suitor and witness that they may be left free and untrammelled to obey the mandate of the court to appear and testify. Public policy and the orderly administration of justice have had much to do with making this rule effective under the American system of government; and hence, all courts have given to the foreign suitor and witness the fullest protection from arrest and restraint by civil pro-

cess, *eundo, morando et redeundo*. The supreme court of North Carolina in *Moore v. Green*, (1875), 73 N. C. 394, said "parties to civil actions appear in court voluntarily, and should be encouraged to appear, by immunity from arrest, whereas defendants in criminal cases appear involuntarily, and need not be encouraged."

§ 139. **The Exemption as Viewed by the Court of Appeals of New York.**—Mr. Justice Allen of the court of appeals of the State of New York, in discussing this subject in an opinion in the case of *Person v. Grier*, (1876), 66 N. Y. 124, said:

This immunity is one of the necessities of the administration of justice, and courts would often be embarrassed if suitors or witnesses, while attending court, could be molested with process. Witnesses might be deterred, and parties prevented from attending, and delays might ensue and injustice be done. In *Norris v. Beach*, (1807), 2 J. R. 294, the defendant, a resident of the State of Connecticut, attending in this State to prove a will, was held exempt from the service of a *capias* and discharged him absolutely from arrest. The like relief was granted in *Sandford v. Chase*, (1824), 3 Cow. 381, and the defendant, a resident of Massachusetts, arrested upon civil process while attending as a witness before arbitrators, was discharged absolutely without filing common bail, the court saying, "The privilege of a witness should be absolute." The court in *Hopkins v. Coburn*, (1828), 1 Wend. 292, expressly affirm the absolute immunity of foreign witnesses attending our courts from the service of civil process for the commencement of an action. The same rule was held in *Seaver v. Robinson*, (1854), 3 Duer, 622, and *Merrill v. George*, (1862), 23 How. Pr. 331, and the service of a summons upon persons attending from other States as witnesses in this State was in each case set aside. This court, in *VanLieuw v. Johnson*, (decided in March, 1871, but not reported), substantially adjudged that a summons could not be served upon a defendant, a non-resident of the State, while attending a court in this

State, as a party. Four of the judges taking part in that decision were of the opinion that neither a party nor a witness attending a court in this State from a foreign State could be served with summons for the commencement of an action. The order denying an application to set aside the summons in that case was affirmed upon the ground that the party had lost his privilege by remaining within the State an unreasonable and unnecessary time after the close of the trial upon which he had attended. Church, Ch. J., and Fulger, J., dissented from this result, being of the opinion that the privilege had not been lost. The authorities, as well as the principle upon which the privilege rests, clearly lead to an affirmance of the order. The defendant, Grier, attended in this State, in good faith, as a witness, and the summons was served upon him while he was so attending and during the continuance of the freedom from arrest. The courts will not take jurisdiction of a party whose rights are thus invaded. It would be, in effect, and for all practical purposes, a withdrawal of the shield and protection which the law uniformly gives to witnesses, if a party coming from a foreign State could be served with process and an action commenced against him, the judgment in which would conclude in all jurisdictions and could be enforced by action everywhere.

CHAPTER XVI.

PROOF OF ALIBI TO DEFEAT RENDITION.

- § 140. Preliminary Observations.
- § 141. Proof of Alibi—a Distinction.
- § 142. The Inadmissibility of Alibi Testimony.
- § 143. The Supreme Court of New York on This Question.
 - 1. Statement of Case.
 - 2. Determination of Particular Issues.
 - 3. Previous Decisions as Controlling.
 - 4. Weight and Sufficiency of Evidence.

§ 140. **Preliminary Observations.**—It is conceded by all of the best authorities on interstate rendition that, in order to be a fugitive from the justice of a State or Territory, within the meaning of the United States Constitution on that subject, and the act of Congress in aid thereof, the alleged fugitive must have been personally present in the State making the demand at the time, or “in the neighborhood of the time,” as the supreme court in *Strassheim v. Dailey*, (1911), 221 U. S. 280, declared, when the crime, or any one overt act towards its commission, is charged to have been committed. As has been said repeatedly this is a jurisdictional fact, and must affirmatively appear in the record accompanying the requisition, and the governor of the State called upon to surrender the fugitive must be satisfied of this fact before he can legally issue his warrant of rendition. To satisfy the governor is to make out a *prima facie* case that the accused is, in fact, a fugitive from justice, and this justifies the arrest and removal of the fugitive from the asylum State; unless the *prima facie* showing is overcome by competent evidence on behalf of the accused, in some legal proceeding, establishing conclusively that he or she was not personally present in the demanding State when the crime, or any one overt act towards its commis-

sion, was committed. To say that a person, charged with being a fugitive from justice, is precluded from denying this accusation, because the evidence tending to establish the denial, is in its nature an "alibi," and is therefore inadmissible for the reason that an alibi is a legal defense to a crime and can only be interposed on behalf of the accused at the trial in the demanding State, is to assert a proposition that cannot be sustained by reason or common sense. (People *ex rel.* Bowers v. Barrett, (1905), 2 Ill. Cir. 149.)

§ 141. Proof of Alibi—A Distinction.—It is indeed true that on *habeas corpus*, in rendition cases, the guilt or innocence of the accused cannot be inquired into in the asylum State, but evidence showing that the accused was not in the demanding State on the date of the commission of the crime, is not proof of an alibi as commonly understood in criminal cases. An alibi, in the usual and generally accepted meaning of the word, is proof of the absence of the accused from the scene of the crime when the crime is committed. The proof of an alibi necessary to defeat a governor's warrant of rendition, on *habeas corpus* is to show by parol or other evidence, clearly and conclusively that the accused was not within the limits of the territory of the demanding State when the alleged crime was committed. This is not proof of an alibi—mark the distinction—an alibi is proof of absence from the scene of the crime; absente from the territorial limits of the State when the crime is committed, clearly is not an alibi known in criminal procedure.

§ 142. The Inadmissibility of Alibi Testimony.—The only authority directly in point that fully sustains this erroneous and unreasonable conclusion that proof of an alibi, or in other words, proof that the alleged fugitive from justice was not present in the demanding State on the day when the crime is charged to have been committed, is inadmissible on *habeas corpus* to defeat a governor's warrant; because this class of proof goes to the guilt or innocence of the accused, (clearly beyond the

pale of investigation on *habeas corpus* in rendition cases), is to be found in an old South Carolina case entitled *Ex parte Swearingen*, (1879), 13 S. C. 80, often cited in the effort to exclude such testimony in rendition hearings in the asylum State. The following excerpt from the opinion of the court is the one usually relied upon:

“It may be remarked, however, that to allow the existence of this fact to be put at issue before the courts of the State upon which the demand is made would, in many, if not most, instances, draw after it the right to inquire into the merits, the very thing which the Constitution and the act of Congress was designed to prevent, for if a party, when in custody in this State, after a warrant of extradition, could, on application for his discharge on a writ of *habeas corpus*, by his own affidavit or otherwise raise the question as to whether he was in the state where he was alleged to have committed the crime at the time when and place where such crime was alleged to have been committed, it is perfectly manifest that the tribunals of this state which have no jurisdiction whatever of the offense charged would thereby be called upon to determine the sufficiency of at least one ground of defense that of alibi which the party charged would be at liberty to set up and would to that extent be entering upon the trial of a case of which they confessedly have no jurisdiction.”

Another case apparently upholding this same view of the inadmissibility of alibi testimony to defeat a governor's warrant, is *In re Palmer*, (1904), 138 Mich. 36, 100 N. W. 996, certain affidavits had been submitted to the court showing that the alleged fugitive was not in the State of Ohio—the demanding State—at the time of the commission of the crime. The supreme court of the State of Michigan in refusing to consider the affidavits, being proof of an alibi, said:

“The rule appears to be that the courts may look into the papers before the governor and determine whether upon their face a crime is charged, but beyond this the court cannot go, in determining the

fact of the petitioner's (the fugitive's) guilt or innocence."

However strong these two cases may appear, strengthened somewhat by certain expressions to be found in two decisions of the United States Supreme Court, nevertheless, a careful study of the opinion in each case will convince one that the conclusions arrived at are based upon false premises and fallacious reasoning—having no regard whatever for the liberty of the citizen—therefore, hardly controlling.

§ 143. The Supreme Court of New York on the Admissibility of Such Testimony.—In the second department of the appellate division of the New York supreme court, this very question came before that court on an appeal from the special term of Kings county, in *People ex rel. Veta Genna v. McLaughlin*, (1911), 145 App. Div. (N. Y.) 513, 130 N. Y. Supp. 458, Mr. Justice Wm. J. Carr, delivered the opinion of the court. In this opinion, which is presented in full herewith, the learned justice meets fairly and squarely every objection raised against the admissibility of so-called *alibi* testimony to defeat a governor's warrant in rendition cases. The opinion is as follows:

1. Statement of the Case.

An indictment was found in the circuit court of Madison county, in the State of Illinois, by the grand jury of said county, by which a person named therein as Vito Toney Zuchero, alias Veta Genna, was charged with the crime of murder for the felonious killing of one Leonard Labianca at a place called Collinsville, in said county, on the 16th day of October, 1910. Thereupon the governor of the State of Illinois made a requisition on the governor of the State of New York for the arrest and extradition of the person named in the indictment. The governor of this State issued a warrant of extradition accordingly, and the police of the city of New York arrested, as the person named in the warrant of extradition, one Veta Genna, a resident of the borough of Brooklyn. The prisoner was brought before a justice of the

supreme court in Kings county, as provided by section 827 of the Code of Criminal Procedure. Thereupon the prisoner denied that he was the person named in the indictment and requisition and warrant of extradition aforesaid. A writ of *habeas corpus* was issued to determine the legality of the prisoner's detention. A return was made to the writ, setting up the warrant of extradition, the indictment aforesaid and the requisition of the governor of Illinois based thereon. The prisoner traversed the return by denying that he was the particular person named in the indictment and the other specified papers and by further denying that he was in the territory of the State of Illinois at the time of the commission of the crime in question, or at any time before or since the commission of said crime. Thereupon the court at special term proceeded to take oral proofs on the issues raised by the traverse to the return. On the completion of the proof offered for and against the prisoner, the court handed down a written opinion in which it declared that it established completely and satisfactorily, in its judgment, that the prisoner was not in the State of Illinois at the time of the commission of the crime charged in the indictment, but it was also declared that, inasmuch as there was a conflict of testimony on this point, it had not the power to determine that the prisoner had not been in the demanding State at the time of the commission of the crime. It thereupon made an order adjudging that the prisoner was the same person named in the warrant of extradition and the requisition and indictment and directing his extradition, but which contained no determination of any other fact put in issue by the pleadings. From that order an appeal was taken to this court. It appears from the opinion of the learned court at special term that it was of opinion, on the whole case before it, had made out by a preponderance of evidence a complete and satisfactory alibi. It said:

“As a matter of evidence the weight appears to be with the relator, in fact I am convinced that he was not in Illinois at the time the crime is said to have been committed, and that we are in the

presence of a case where the proof of an alibi is complete and satisfactory.”

Nevertheless, as it declares, it felt itself bound to ignore this “complete and satisfactory” proof of an alibi because, as it declared, an alibi is a matter of defense at the trial and cannot be used to defeat extradition. It based this conclusion on the authority of *People ex rel. Ryan v. Conlin*, (1895), 15 Misc. Rep. 303, and upon some expressions of the court of appeals in *People ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 176, supplemented by a statement of Mr. Moore in section 633 of his work on “Extradition.”

2. Determination of Particular Issues.

How far the learned special term was justified in this conclusion we shall now inquire. In this State the only authority which held expressly that the question of an alibi could not be considered on *habeas corpus* to review a warrant of extradition is that of *People ex rel. Ryan v. Conlin, ut supra*. That decision was not made by an appellate court. In that case a warrant had issued to deliver prisoners to the State of Massachusetts. In *habeas corpus* proceedings the prisoners gave proof that they were not in the demanding State at the time of the commission of the crime. The court declared that, inasmuch as this proof went to establish an alibi, it was a matter of defense at the trial and could not be considered on *habeas corpus* to review the warrant of extradition. The reason given by that court for this conclusion was that it was settled that in proceedings to review a warrant of extradition the guilt or innocence of the prisoner could not be inquired into. (*Matter of Clark*, (1832), 9 Wend. 212.) Therefore it argued, as an alibi is concerned with the question of the guilt or innocence, it cannot be considered on *habeas corpus*. It seems to us that this reasoning is clearly unsound. An alibi in its general features consists of proof that the defendant was not at the scene of the crime at the time of its commission. Proof that the prisoner was not in the demanding State at the time of the commission of the crime is necessarily proof that he was not at the

scene of the crime. But the question involved in extradition proceedings is not whether the defendant was at the scene of the crime at the time of its commission, but whether he was anywhere within the demanding State when the crime was committed. This latter question had nothing to do with guilt or innocence, but it has all to do with the question whether the prisoner has fled from the demanding State and is, therefore, a fugitive from justice.

In matter of Clark, *ut supra*, the presence of the prisoner in the demanding State when the crime was committed was not disputed, and hence the question of alibi was not involved. Before a warrant of extradition can be sustained it must appear as a jurisdictional fact that the prisoner is a fugitive from justice, that is, it must be shown that he was actually present in the demanding State when the crime was committed. Mere constructive presence is not enough. (People *ex rel.* Corkran v. Hyatt, 172 N. Y. 176, *sub nom.* Hyatt v. Corkran, 188 U. S. 691; *Ex parte* Reggel, 114 U. S. 642; Munsey v. Clough, 196 U. S. 364; Appleyard v. Massachusetts, 203 U. S. 222; McNichols v. Pease, 207 U. S. 100.)

In McNichols v. Pease, *ut supra*, the Supreme Court of the United States, through Harlan, J., reviewing many of its preceding decisions on this question, set forth seven distinct propositions of law which it deemed established by its prior decisions. It was there held that a warrant of extradition in itself made out a *prima facie* case that the prisoner was a fugitive from justice of the demanding State, that the warrant could be reviewed by *habeas corpus*, and, in the language of the court itself, that, "One arrested and held as a fugitive from justice is entitled, of right, upon *habeas corpus*, to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from the justice of the demanding State, and thereby overcoming the presumption to the contrary arising from the face of an extradition warrant."

That is the latest expression of that court on this

question and it was made in a case directly involving the so-called question of alibi.

Therefore, if the so-called alibi be of such a nature as to establish the absence of the prisoner from the demanding State when the crime was committed, it must be considered on the question of the jurisdictional fact, not whether the prisoner be guilty or innocent, but whether he is in fact a fugitive from justice. Any expression of opinion to the contrary has no longer any basis of authority either in the Federal courts or in the courts of this State.

There are to be found, however, many expressions in the various opinions of the courts which may give rise to some doubt as to the extent and nature of proof required to rebut the presumption arising from extradition papers, regular on their face. This doubt can be removed if we but measure these expressions by facts of each particular case and keep in mind the precise question therein involved and decided.

3. Previous Decisions as Controlling.

In *People ex rel. Corkran v. Hyatt, ut supra*, the absence of the prisoner from the demanding State when the alleged crime was committed was conceded by a formal stipulation in writing. Any expression of opinion as to whether such fact could or could not be established sufficiently on conflicting evidence was purely *obiter* and not in any way controlling, for such question was not up for decision. When this last cited case went to the United States Supreme Court it was affirmed, (188 U. S. 691.) In the opinion of the United States Supreme Court in that case it said:

“The indictment in this case named certain dates as the times when the crimes were committed, and where in a proceeding like this there is no proof or offer of proof to show that the crimes were in truth committed on some other day than those in the indictments, and that the dates therein named were erroneously stated, it is sufficient for the party charged to show that he was not in the State at the

times named in the indictments, and when those facts are proved so that there is no dispute in regard to them, and there is no claim of any error in the dates named in the indictments, the facts so proved are sufficient to show that the person was not in the State when the crimes were, if ever, committed."

If it be urged that the court meant that the "facts so proved" must be proved beyond actual dispute, then it is enough to say that such question was not involved in that case and hence was not actually decided.

In *Ex parte Reggel, ut supra*, it was said by the same court that where a person held under a warrant of extradition denied that he was a fugitive from the demanding State he "should not be discharged (on *habeas corpus*) merely because, in the judgment of the court, the evidence as to his being a fugitive from justice was not as full as might properly have been required, or because it was so meager as, perhaps, to admit of a conclusion different from that reached by him." (The governor issuing the warrant.)

In that case however, the question of the sufficiency of proof arose only as to the face of the papers themselves, there being no further proofs offered. The court was of opinion that the papers were sufficient on their face, and its expression must be construed with relation to the precise situation then before it.

In *Munsey v. Clough, ut supra*, a prisoner held under a warrant of extradition sought to review it on *habeas corpus*. She put in issue the question whether she had been within the demanding State at the time of the commission of the alleged crime. She offered no evidence however, to rebut the presumption arising upon the face of the extradition papers, but contented herself with an attempt to show that the papers did not on their face show sufficiently that she was present in the demanding State when the crime was committed. On an examination of the extradition papers, the court declared them sufficient on their face to show such presence. Its opinion, however, contains a statement as fol-

lows: "When it is conceded, or when it is so conclusively proved, that no question can be made that the person was not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding State, then the court will discharge the defendant. Hyatt v. Corkran, 188 U. S. 691, affirming the judgment of the New York court of appeals, 172 N. Y. 176. But the court will not discharge a defendant arrested under the governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the State, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused. As a *prima facie* case existed for the return of the plaintiff in error, and she refused to give any evidence upon the return of the writ which she herself had sued out, other than the papers before the governor, no case was made out for her discharge."

It is clearly apparent that a portion of this language of the opinion is entirely apart from the question then up for decision. The prisoner had not attempted to rebut any proofs of the presumptions arising upon the face of the papers, hence, there was not involved in the decision of the court any question as to the length to which such rebutting proofs must go in order to meet the *prima facie* case.

In McNichols v. Pease, *ut supra*, which is the latest case in the United States Supreme Court on this question, and from which we have quoted above, the question here at bar was squarely before that court. There the prisoner sought to prove that he was not present in the demanding State on the day when the crime was committed. His plea was not ignored on the theory that it was an attempt to prove an alibi, and, therefore, not cognizable on *habeas corpus*. On the contrary, the proofs offered were examined carefully and the court found that said proofs did not rebut the presumption arising on the face of the extradition papers, simply because they went no further than to show that the prisoner was ab-

sent from the demanding State during only the afternoon of the day of the commission of the crime, and was present in the afternoon at a place in Illinois not more than an hour and a half's journey from the place of the alleged crime in Wisconsin. It did not appear of record at what hour the crime was done. The court declared the rule applicable as follows: "When a person is held in custody as a fugitive from justice under an extradition warrant, in proper form and showing upon its face all that is required by law to be shown as a prerequisite to its being issued, he should not be discharged from custody unless it is made clearly and satisfactorily to appear that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States."

This part of the opinion in that case is but a reiteration in another form of the matter of which we have quoted earlier from the same opinion, as one of the rules deemed by that court to have been fixed finally by its prior decisions.

Suppose, however, that on the whole case the court is of opinion that "it is made clearly and satisfactorily to appear that he (the prisoner) is not a fugitive from justice," must the court refuse to discharge the prisoner simply because in the whole case there are conflicting proofs on this question? No matter where it has been so asserted, by way of *obiter dictum*, it has never been so decided actually, so far as I can find after some labor. At first blush it may seem that it was so actually decided in *Dennison v. Christian*, 72 Neb. 703, affirmed, 196 U. S. 637, and in *Farrell v. Hawley*, 78 Conn. 150. An examination of these cases will show that this question was not involved necessarily in the actual decision in either case. In the Nebraska case, the prisoner, held on a warrant of extradition of the governor of Nebraska, sought to review it on *habeas corpus*. He put in issue the question whether he was in the demanding State at the time of the commission of the crime and evidence was taken on that question, and the court refused to find that the prisoner was not a fugitive from justice. On appeal to the su-

preme court of Nebraska the determination of the lower court was upheld, but the supreme court assigned as its reason of decision the fact that it appeared in the proceedings held under the writ of *habeas corpus* that, before the governor had issued the warrant in question, the questions of jurisdictional facts were fairly controverted before him, and that he had taken evidence thereon pro and con. It was there held that in that State its courts would not review the determination of the governor by *habeas corpus* under such circumstances, unless it appeared that the governor's determination of the controverted facts was erroneous beyond substantial dispute. In the Connecticut case the question arose not on proofs actually taken but on the pleadings. The prisoner sought to review the governor's warrant of extradition by *habeas corpus*. The court held that by the pleadings in the proceeding it appeared that the governor had held a hearing before issuing the warrant and had determined that the prisoner was a fugitive from justice. Under these circumstances the learned court declared that the governor's determination should not be reviewed by *habeas corpus* unless it was held and proved that there was no evidence before the governor worthy of serious consideration showing that the prisoner was a fugitive from justice, and it cited *Munsey v. Clough, ut supra*, as an authority for its ruling. Both of these cases, however, were decided before the later decision of the United States Supreme Court in *McNichols v. Pease, ut supra*. In any event, however, they do not cover the case now here at bar, for in this case there is no question of reviewing a determination of the governor made after a hearing pro and con of controverted questions of fact. Nor does there appear any controlling reason why this concededly jurisdictional fact should be subject to any other rule as to its proofs than that which controls the determination of all other questions of fact at common law.

4. Weight and Sufficiency of Evidence.

In order that a fact may be determined conclusively in any judicial proceeding, it is not necessary that the proofs should be without any conflict. Nor does proof fall short of being conclusive simply because there is other proof to the contrary. The true rule should be that this question of jurisdictional fact must be determined by the court as is any other question of which it has the power and duty to determine according to the rule of the common law as to the preponderance of evidence. Any different rule might easily lead to most oppressive consequences, which suggest themselves at once to any observing mind. We are of opinion, therefore, that the learned court at special term was in error when it declined to make a determination on the question of whether the prisoner at bar was within the State of Illinois when the crime was committed, in the face of proofs which it has declared, in its opinion, to be "complete and satisfactory" to the effect that he was not there at the time in question.

As was before stated this question of jurisdictional fact was put in issue by the traverse to the return to the writ of *habeas corpus*, and must be determined upon the proofs taken by the court before the writ may be dismissed and the prisoner remanded.

We have concluded, therefore, to reverse the order dismissing the writ of *habeas corpus* and to remit the matter to the special term for a determination by it of the question whether the prisoner is actually a fugitive from justice of the State of Illinois, either on the proofs already taken or upon such further proofs as either party, on reasonable opportunity of hearing, may see fit to offer.

CHAPTER XVII.

GOOD FAITH OF THE PROSECUTION.

- § 144. Scope of Inquiry in the Asylum State.
- § 145. Questions for the Governor's Consideration.
- § 146. May the Governor or Courts Look Beyond the Record
- § 147. A Noted Case and a Fearless Judge.
- ? 148. Ruling of the Michigan Supreme Court.
- § 149. No Rendition Unless Good Faith Is Shown, Ohio Rule.

§ 144. The Scope of Inquiry in the Asylum State.—Can the courts of the surrendering State on *habeas corpus*, in interstate rendition proceedings, go into the question of the good faith of the party or parties behind the prosecution in the demanding State? Should it appear, after a thorough judicial investigation, that ulterior and private motives, other than the punishment for crime, are behind the prosecution, would the court be justified in the surrendering State in declaring the governor's warrant of rendition void, and ordering the discharge of the alleged fugitive? Is a criminal prosecution, instigated and brought on by a person or persons, who are or may be interested in securing the presence of the accused in a certain State for another purpose, such a prosecution or charge of crime as is contemplated by the Constitution and laws of the United States? These questions have been met and discussed by the courts, Federal and State, from many different viewpoints and the conclusions reached have not always been uniform nor consistent. Many *nisi prius* judges, in able and strong opinions, have held that whenever it should satisfactorily appear that such improper motives were at the bottom of the prosecution in the demanding State, then the surrender of the alleged fugitive should be denied, even though the investigation may be subsequent to the issuance of the governor's warrant of arrest and surrender.

The objection usually urged against this line of action by the courts of the asylum State, is very strongly set forth in *Commonwealth v. Philadelphia County Prison*, (1908), 220 Pa. St. 401, 69 Atl. 916, the supreme court of Pennsylvania said:

Assuming that the demanding State has complied with the requirements of the Federal Constitution and the act of Congress in making the requisition for the accused, it would be equally an unconstitutional exercise of power for the court of the asylum State to inquire into the motives of the prosecution, instituted in conformity with the laws of the demanding State, and release the offender and thereby prevent his extradition for trial in the latter State. The only possible effect of permitting the motives of the private prosecutor to be shown on a *habeas corpus* extradition proceeding would be to show the guilt or innocence of the accused. If a person is guilty of an offense against the laws of a State, it is no defense for him to allege that the prosecution was inspired by improper motives. It very frequently happens that criminals are brought to punishment only by persons who have motives other than the vindication of the violated law; but it has never been held that such reason was sufficient to invalidate a conviction for a criminal offense. Good faith and courtesy require a State to honor the demand of a sister State for the return of a fugitive from justice.

§ 145. Questions for the Governor's Consideration.—As a matter of fact, when a requisition is presented to a governor of a State or Territory, accompanied by an authenticated copy of an indictment found or an affidavit made before a magistrate, four primary questions usually arise for the consideration of the governor of the surrendering State:

1. Are the requisition and papers in regular and legal form?
2. Is the accused substantially charged with a crime against the laws of the demanding State?
3. Is the accused a fugitive from the justice of the State asking his arrest and surrender?

4. Is the requisition made for any ulterior or private purpose, other than the punishment for crime, then is it such a *demand* within the meaning of the law pertaining to interstate rendition, as should be honored?

The first and second are questions of law and upon the governor of the surrendering State rests the responsibility of their determination in such manner as is satisfactory to him. The third is a question of fact upon which he is required to demand such proof, from the authorities of the demanding State, as will leave no room for doubt in his mind, that the accused was physically present in that State on the day and date when the alleged crime is charged to have been committed. The fourth and last question is the one about which there is grave doubt as to the right of the executive to consider when passing upon the requisition of the governor of the demanding State. The Supreme Court of the United States apparently has settled this question, unfavorably to the right of the executive to make such investigation. See *Pettibone v. Nichols*, (1906), 203 U. S. 192 and *Drew v. Thaw*, (1914), 235 U. S. 432. However, a distinction may have been intended by the Supreme Court, in the decision of these two cases, between an inquiry into the motives of the executive and officials of the demanding State, and the ulterior and selfish motives inspiring a private person as accuser in that State. In *Pettibone v. Nichols*, *supra*, the attempt was made to defeat the rendition of the alleged fugitive, upon the ground of fraud and connivance of the governors and officers of both the demanding and surrendering States. In *Drew v. Thaw*, *supra*, the motive and purpose of the officers of New York State were attributed to the desire to secure the presence of the accused in that State for another object than his prosecution for the crime charged. The court in both cases spoke out strongly against such an inquiry, as being contrary to public policy, and the Constitution. Doubtless referring to that clause relating to *full faith and credit*, and this may have shielded the officials from attack but did the Supreme Court intend to

leave the motives of the private accuser in the demanding State still open to inquiry in the surrendering State?

The supreme court of the State of Mississippi in an interstate rendition case, *Ex parte Edwards*, (1907), 91 Miss. 628, 44 So. 827, in referring to this very subject said:

“It must be noted that there is no question that the accused is the identical man wanted by Alabama. Neither is there a pretense that the process was resorted to in fraud, or for the accomplishment of private ends. The governor would have heard any objections as to these, and countermanded his warrant, if satisfied of either, as we make not the slightest doubt. Certain it is that no such questions are disclosed in this record. If there were, we do not say the courts might not consider them.”

Contra: State *ex rel.* Herbert v. Coleman, (1912), 3 Tenn. Civ. A. 316; State *ex rel.* Fowler v. Langum, (1914), 126 Minn. 38, 147 N. W. 708; *Ex parte Massee*, (1913), 95 S. C. 315, 79 S. E. 97.

In Church on Habeas Corpus, section 474, page 228, it is said that:

“The requisition must be made in good faith according to the letter and intent of the Constitution and law, and not in violation of the spirit and design of both, and the governor upon whom the demand is made has the right even when all the papers are technically correct to inquire whether the requisition is made for a different purpose from the one named in the Constitution. In such a case the executive will exercise his discretion in refusing to comply with the request.”

Mr. Spear, in his work on the Law of Extradition, referring to the difference between international extradition and interstate rendition, on page 551, says:

“There is, in fact, no distinction between these two forms of extradition that implies a difference in the rule relating to the uses to which the custody, thus gained, may be legitimately applied, or that affects the obligation of good faith in either case. A State, whether in demanding or surrendering a

fugitive criminal, acts as if it were a sovereign nation, and for this purpose exercises the prerogatives of a nation. Other States, not involved in the matter, have nothing to do with the question pending between the two States directly concerned in a particular case; and the general government has nothing to do with it. The question belongs exclusively to these two States, and their intercourse with each other is that of separate and independent States, as much so as if they were separate and independent nations.’’

§ 146. May the Governor or Courts Look Beyond the Record?—As all material questions relating to interstate rendition proper for the consideration of the governor of the surrendering State, are open to the fullest review in the courts, no reason can be seen why the governor as well as the court may not look beyond the bare record, receiving evidence if necessary, for the purpose of determining whether the requisition itself is made for an ulterior or private motive in violation of the letter and intent of the Constitution and laws. It is concededly true that if such a purpose is shown to exist, clearly established by evidence heard, then and in that event, there can be no lawful rendition of the accused fugitive. This view of the law not only conforms to good reason but is upheld by a long line of decisions regarded as controlling authority on this particular subject.

In *United States v. Pope*, (1878), Fed. Cas. No. 16,069, it was said:

“In extradition between the United States and other nations copies of the warrant and of the depositions on which it was founded are made evidence, (Revised Statutes, Section 5271), and in extradition between the States a copy of the indictment or of an affidavit is sufficient (Revised Statutes, Section 5278). In both of these classes of cases, the executive authority, whether of the State or nation, had an ultimate discretion whether to surrender the supposed criminal or not, and they often refuse though the papers are in due form and unimpeached, if there is good reason to believe that some ulterior

object or sinister design is concealed under the regular forms.”

In *Ex parte Slauson*, (1896), 73 Fed. 666, requisition was made by the governor of the State of Tennessee upon the governor of the State of Virginia for the rendition of one Slauson, for the crime of fraudulently appropriating money, rendition was granted. Whereupon Slauson sued out a writ of *habeas corpus* in the federal court to secure his discharge from custody. The judge in the course of his opinion said:

“Slauson is here clothed by law with the right to show why he should not be taken away from his wife and children and his home in Petersburg to the distant State of Tennessee and there tried on the vague charge, merely upon individual affidavit, of fraudulent appropriation of money. He has a right to show here that he has not committed the crime of a fraudulent appropriation of money and he has the right to show moreover the *animus* of the person who has instituted this proceeding. * * * Comment upon his (complainant’s) conduct is unnecessary. His charge of fraud against Slauson is an afterthought. The affidavit by which he charged the fraud is a flagrant perjury. His prosecution of this extradition proceeding is malicious. The governor of Tennessee was deceived and the requisition which he issued for Slauson was improvidently granted. The governor of Virginia was not advised of and had no means of testing the truth of the allegations of the requisition, but in performing his duty in issuing his warrant directing the arrest of Slauson, he took care to reserve to him in advance the privilege of the writ of *habeas corpus* under which he is now before me.”

§ 147. A Noted Case and a Fearless Judge.—A celebrated case which attracted wide attention at the time it was heard and which is often quoted approvingly and otherwise, on this very subject, is that of *Tennessee v. Jackson*, (1888), 36 Fed. 258. One Jackson advertised a horse for sale in the daily press of Chicago, Illinois, and by chance the advertisement came under the notice

of a party living at Chattanooga, in the State of Tennessee, and after some correspondence the horse was purchased from Jackson and shipped to Tennessee. Upon the arrival of the animal at Chattanooga, the purchaser was very much dissatisfied and claimed that he had been swindled, thereupon he went before a justice of the peace in his home-town and made an affidavit against Jackson, charging him with a breach of warranty, and with being a fugitive from the justice of the State of Tennessee. A requisition on the governor of Illinois was issued by the governor of Tennessee demanding the arrest and rendition of Jackson as such fugitive. Jackson was arrested in Chicago on the warrant of the governor of Illinois and delivered to the Tennessee officials and without any delay was carried to that State. As soon as he arrived at Chattanooga, a petition for a writ of *habeas corpus* was filed in the United States district court, and the writ was issued by the order of the Honorable David M. Key, an able and fearless judge, on the ground that Jackson was not a fugitive from Tennessee for the reason that he had never been in the State prior to being brought there by its officers. Judge Key in his opinion said:

“The whole proceedings were a fraud upon the law. If this arrest and imprisonment are to be maintained the opportunities for wrong and abuse of this law will be great and widespread. * * * It seems to me that the general government cannot stand by and see its laws so trifled with and abused. It is well settled, as I understand it, that where treaties between a government and a foreign nation provide for the extradition of persons charged with certain specific offenses and where extradition has been obtained upon the ground that such offense has been committed, the person whose custody and return has been so obtained cannot when brought in the jurisdiction of the court to be tried for a different offense, especially if it be not embraced in the terms of the treaty.

“Such a case is not altogether analogous to the one in hand, but it tends to show the good faith

required between nations. Certainly the same character of faith should obtain between the executive authorities of the different States of this nation which in many respects are foreign to each other. It seems to me that such authorities should not be held to the seizure and removal of a citizen of its State when such seizure and removal were procured by fraud, falsehood and imposition. It is ordered that the petitioner be discharged."

In assuming jurisdiction by *habeas corpus* of the fugitive, Jackson, after his arrival in the State of Tennessee—the demanding State—and going into the legality of his detention and finally discharging him, the learned federal judge possibly transcended his authority, yet it is freely admitted that Jackson was not a fugitive from the justice of the State of Tennessee and therefore ought not to have been rendited from Illinois. Judge Key's action in this case stands out in bold relief when compared to the ruling of the United States Supreme Court in *Pettibone v. Nichols*, (1906), 203 U. S. 192, wherein the very reverse was held to be the law. He may have erred on the side of justice and also received his full measure of criticism for the same, especially in *In re Cook*, (1892), 49 Fed. 833, yet his words of wisdom on the question of good faith, in that decision, will always commend themselves to all thoughtful persons.

§ 148. Ruling of the Michigan Supreme Court.—Another very interesting case on this subject is that of the *Matter of Frank Cannon*, (1882), 47 Mich. 481, 11 N. W. 280, wherein Cannon was arrested and brought back from Kansas on a complaint charging him with the crime of seduction, brought before a justice of the peace in the State of Michigan. After his return to Michigan the charge of seduction against him was abandoned and he was arrested on the charge of bastardy and placed in the county jail. He sued out a writ of *habeas corpus* from the supreme court of that State, alleging that he was unlawfully restrained of his liberty. The court said:

"In the conflict of opinion we feel bound to prefer the rule that compels regard to good faith. It is

very well known that the perversion of extradition proceedings has, on more than one occasion, led to difficulties between nations, and to refusals by State executives to deliver up persons charged with crime whose arrest was supposed to be desired for sinister purposes. It is not always possible to get at the facts in such cases. But we think the courts of justice are bound, where a case comes before them which is entirely free from doubt, to refuse to allow any use to be made of such proceedings which would be a manifest violation of good faith, and a perversion of the measures which had been resorted to in order to bring the party accused within our jurisdiction." (See *In re Fitton*, (1891), 45 Fed. 474).

§ 149. No Rendition Unless Good Faith is Shown.
Ohio Rule.—The supreme court of Ohio has spoken out openly and fearlessly, contending that no rendition should be sought or honored unless good faith, is at the very foundation of the prosecution in the demanding State, and that all rendition should be rigidly confined to the single purpose specified and that any and all attempts to make it serve any other purpose should be defeated by the prompt action of the courts. In *Compton v. Wilder*, (1883), 40 Ohio St. 130, 7 Am. Law Rec. 212, it appeared that D. H. Wilder, upon a requisition of the governor of Ohio, directed to the governor of Pennsylvania, was arrested there and brought to Ohio to answer a criminal charge for an alleged act made indictable and punishable by the laws of Ohio, the alleged offense having consisted in a claim that he had misrepresented his wealth to Compton, Ault & Co., and induced them to become parties to a note for some \$5,000, which they were compelled to pay. For that reason he was arrested and carried to Ohio. In that State he waived a preliminary examination and was bound over to answer the charge before the grand jury of Hamilton county and the court of common pleas, if the grand jury should find a true bill. He gave bond and was released. On the very day of his enlargement on bail, Compton, Ault & Co., began suit to recover from Wilder the amount of money

they claimed they had lost by reason of his representations and that they lost the same by reason of his fraud and misrepresentation. An order of arrest was issued and Wilder was taken in custody. He filed a motion to have the service of summons and the service of the order of arrest set aside and his discharge ordered.

The arrest was made on the same day he was bound over, and had given bond on the criminal charge, and it appeared prior to the time that a through train would start for Corry, Pennsylvania, Wilder being a resident of Corry, Pennsylvania, where he had lived many years. The motion was resisted. It was not claimed that a suit could not be brought and an order of arrest might not be sworn out and prosecuted, provided a valid service could be obtained. Wilder claimed that a valid service could not be obtained upon him under the circumstances. Compton, Ault & Co., were the movers in procuring the requisition and the institution of the criminal charge against Wilder. It was at their instance that the power of the State of Ohio was invoked, and the governor of Pennsylvania acted and in consequence of which Wilder was then in Ohio. Judge Yalpe of the superior court of Cincinnati, before whom the motion was heard, sustained the contention of Wilder's attorneys, set aside the order of arrest, vacated the summons and discharged Wilder. The district court of Hamilton county, in a review of the case upon exceptions taken by the plaintiffs, affirmed the judgment of the lower court and then the case was carried by writ of error to the supreme court of Ohio. (*Compton v. Wilder, supra.*)

The opinion of the court was delivered by Judge Nash, who said:

"Wilder had been surrendered by the State of Pennsylvania to be prosecuted by the State of Ohio and in her name for an alleged crime. It was for this purpose alone that the State of Ohio asked his extradition. It was for this purpose alone that the State of Pennsylvania handed one of her citizens over to the officers of Ohio.

"This proceeding took place by virtue of that por-

tion of section 2, article 4 of the Constitution of the United States, which provides that a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction, and by virtue of the laws of the United States, enacted to make this provision of the Constitution effective.

"In this case, the machinery was set in motion by Compton, Ault & Co., by the application to the governor of Ohio. Good faith upon the part of these applicants, and good faith upon the part of Ohio to the surrendering State, demanded that Wilder having been by force brought into Ohio for a specific purpose should not be deprived of any rights except such as he had forfeited by the commission of the alleged crime. He cannot be held to have forfeited any right before any conviction. It is claimed that he was indebted to Compton, Ault & Co., if he was, it was right to be sued in the jurisdiction in which he was domiciled, unless he voluntarily came into the jurisdiction of Ohio.

"It was bad faith in Compton, Ault & Co., to commence a civil action and attempt to serve a summons and an order of arrest therein upon Wilder before conviction, and before he had an opportunity to return to his home. It would become bad faith in this State if its courts should make such service effective. It was a duty made incumbent upon the governor of Pennsylvania by the Constitution of the United States to surrender Wilder, upon proper application from the governor of Ohio. But as reflecting upon this question of good faith, it is not irrelevant to look at the legislative enactments of this State upon this subject.

"March 25, 1870, the general assembly adopted a resolution relative to the surrender of persons charged with treason, felony or other crimes (67 Ohio L. 171.) In this resolution it was suggested that in the opinion of the general assembly, the governor of Ohio should not make a requisition for an alleged fugitive from justice until clearly satisfied

that the requisition is sought in good faith for the punishment of crime and not for the purpose of collecting any debt or pecuniary mulct, or for the purpose of removing the alleged fugitive to a foreign jurisdiction, with a view there to serve him with civil process. It also suggested that the governor should be in like manner satisfied before issuing his warrant upon a requisition made upon him by any other State for an alleged fugitive. The rule thus suggested has governed the executive department of the State since 1870. What was formerly a rule of the executive department suggested by the general assembly became a law controlling the action of the governor, on the first of January, 1880. (Rev. Stat. sec. 95.)

“By the action of the executive and legislative branches of her government, Ohio has indicated to the other States, her purpose to confine the use of power to extradite persons charged with crime to its sole and proper object. To secure a service of summons in a civil action like the one we are considering is not one of the objects intended to be accomplished by this grant of power. In a country like ours, this power is useful and indispensable. It was intended, however, to subserve great public interests. When otherwise used, it becomes an evil. The temptation to make it subservient to private interests is great. This weapon, intended alone to secure the punishment of crime, is frequently resorted to to enforce the collection of private debts, or to remove a citizen from his home into a foreign jurisdiction that he may there be sued in a civil action.

“This growing evil has been seen and appreciated by the chief executives of many States, and to guard against it, rules and regulations are being adopted which may make the extradition of an alleged fugitive in a proper case extremely difficult. It has been recognized by both the executive and legislative branches of our government as is shown by their former action.

“The judicial should be as swift in putting the seal of condemnation upon this abuse as have been

the other branches of the government. The certain remedy to prevent its growth, is to deprive all persons who participate in the misuse of the power to extradite persons, alleged to be fugitives from justice, of the fruits resulting from such participation."

CHAPTER XVIII.

GUILT OR INNOCENCE OF FUGITIVES.

- § 150. No Such Inquiry on Habeas Corpus.
- § 151. Hearing Limited in Florida.
- § 152. When Proof of Crime Is Prohibited.
- § 153. Other Decisions on the Subject.
- § 154. Affidavit Showing no Crime—no Rendition.
- § 155. The Offense Must Be Plainly Charged.
- § 156. The Effect of Court Ruling.
- § 157. The Court Often Misled.
- § 158. Federal Rule Reasonable.

§ 150. **No Such Inquiry on Habeas Corpus.**—There is one proposition in connection with interstate rendition upon which the authorities are practically in perfect harmony, and that is, that the guilt or innocence of the alleged fugitive can not be inquired into by the courts of the surrendering State in *habeas corpus* proceedings, *after* the governor of that State has issued his warrant of rendition, this question by the law is left solely and entirely to the tribunals of the demanding State, wherein the fugitive is charged with the commission of crime. In the case of *In re Roberts*, (1885), 24 Fed. 132, heard in the United States district court of the State of Georgia certain affidavits were offered on behalf of the alleged fugitive, the practical effect of which was a complete denial of guilt. The court in this proceeding, for his discharge on *habeas corpus*, excluded such affidavits from its consideration, for the reason that a proper charge of crime having been presented to the governor of the surrendering State, and the only tendency of the affidavits being to establish the innocence of the fugitive of the crime charged, the court therefore most positively declined to investigate in any way the guilt or innocence of the accused, declaring that to do so would be an unwarranted invasion of the jurisdiction of the courts of

the demanding State, where only such a question could be lawfully and judicially determined. The court however, held that it would be otherwise were the arrest made upon local and preliminary process and *before* the issuance of the governor's warrant of rendition. In which event investigation would be had, at least to disclose if there was a prosecution in good faith and if there was probable cause to suspect the guilt of the party accused.

§ 151. **Hearing Limited in Florida.**—The supreme court of the State of Florida, in the case of Kurtz v. State, (1886), 22 Fla. 45, in passing upon this same question, held that the courts of that State in *habeas corpus* proceedings, where the petitioner or prisoner is arrested on a governor's warrant for rendition to another State, cannot go into a trial of the merits of a case and cannot legally hear any evidence tending to establish the fact whether the prisoner is guilty or innocent of the crime charged in the demanding State. The judicial hearing in the State of Florida is only an initiatory step to a full and complete trial in the State where the alleged crime was committed, and the powers of the Florida courts are limited to a determination on the sufficiency of the papers and the identity of the alleged fugitive from the justice of the demanding State.

§ 152. **When Proof of Crime is Prohibited.**—In a late case *In re Bruchman*, (1914), 28 N. D. 358, 148 N. W. 1052, the supreme court of the State of North Dakota held that "they will not inquire or allow evidence to be introduced of the guilt or innocence of the defendant, nor whether, as a matter of fact, the crime has been committed at all in the case where a person is charged with having deserted or failed to support his wife and children, and where the proof of the commission of the crime must necessarily be the same as the proof of the **guilt or innocence of the accused.**" This was practically in accord with the ruling of the United States circuit court of appeals, second circuit, in the case of *In re*

White, (1893), 55 Fed. 54, wherein it was sought to introduce, on behalf of the accused, in a *habeas corpus* proceeding, certain affidavits which tended to show that no crime had been committed in the demanding State, but the court would not allow such evidence to be introduced claiming that to do so would be hearing proof of the guilt or innocence of the accused, and thereby invading the right of the "State having jurisdiction of the crime." This is unquestionably the correct view of the law and the one that is upheld by reason and common sense.

§ 153. **Other Decisions on the Subject.**—The authorities, with great unanimity of reasoning, uphold the position of both the United States district court of Georgia and the supreme court of Florida, in their interpretation of the law on this subject, leaving no room whatever for doubt as to the soundness of their decisions, to which reference has just been made, as will be seen from the following cases: *In re Clark*, (1832), 9 Wend. 212; *State v. Schlemm*, (1846), 4 Harr. 577; *In re Greenough*, (1858), 31 Vt. 279; *Matter of Voorhees*, (1867), 32 N. J. L. 141; *People ex rel. Lawrence v. Brady*, (1874), 56 N. Y. 182; *Ex parte Swearengen*, (1879), 13 S. C. 80; *Tullis v. Fleming*, (1879), 69 Ind. 15; *In re Mohr*, (1883), 73 Ala. 503, 49 Am. Rep. 63, 18 Cent. L. J. 252, 2 Ala. L. J. 457; *State v. O'Connor*, (1888), 38 Minn. 243, 36 N. W. 462; *In re White*, (1893), 55 Fed. 54; *Ex parte Devine*, (1897), 74 Miss. 715, 22 South. 3; *Commonwealth v. Hare*, (1908), 36 Pa. Supr. Ct. 125; *Harris v. Magee*, (1911), 150 Iowa, 144, 129 N. W. 742.

In *Ex parte Swearengen*, *supra*, where it was objected that the person originating the prosecution in the demanding State was not a citizen of that State, the supreme court of South Carolina held that, "it is quite sufficient to say that we are not at liberty to consider such a question. The authorities of the State of Georgia have undoubtedly recognized the fact that a prosecution has been lawfully commenced in that State, and it is not for us to question it. Whether the charge has been made in proper legal form or whether it can be sustained by

legal evidence, are questions which belong exclusively to the tribunals of the State where the crime is alleged to have been committed, as they alone have jurisdiction to determine whether the laws of such State have been violated. Even, however, were the point raised a matter within our jurisdiction we are altogether unable to discover any valid reason why a citizen of South Carolina may not commence a prosecution in the State of Georgia for an offense committed within the territorial limits of that State."

§ 154. Affidavit Showing no Crime—no Rendition.—In the case of *In re Greenough, supra*, the supreme court of Vermont held that the courts of that State, on *habeas corpus* could not pronounce upon the guilt or innocence of the alleged fugitive from justice, declaring that the courts of the demanding State alone were clothed with such power. But the court suggested another question for investigation, closely allied to the one it refused to consider, when it strongly contended that there was a marked distinction between a charge of crime by an affidavit and a charge of crime by an indictment and on this proposition the syllabus is as follows:

When the fugitive is charged with crime by an affidavit, and it appears clearly from the whole affidavit that no crime has been committed, it seems that a court, upon *habeas corpus*, may properly discharge the prisoner, notwithstanding the executive upon whom the requisition is made has granted a warrant upon which he has been arrested, but *aliter*, when the prisoner has been indicted in the State from whence the requisition comes.

§ 155. The Offense Must Be Plainly Charged.—In another case just cited, *People ex rel. Lawrence v. Brady, supra*, the court of appeals of the State of New York, held that "the guilt or innocence of the alleged fugitive from justice, in *habeas corpus* proceedings, was wholly immaterial but there must be a charge of a violation of the criminal law of the demanding State and that where the demand is supported by an affidavit, as authorized

by the act of Congress of 1793, no less degree of certainty is admissible than is required in an indictment for the same offense. If any distinction exists, the affidavit should be more full and explicit; and the offense should be therein distinctly and plainly charged. It is usually the *ex parte* statement of the accuser. An indictment is found by a body, standing indifferent between the parties, and charged upon oath, to inquire of offenses, and which is supposed to act upon competent proof in finding the bill."

§ 156. The Effect of Court Ruling.—The evident effect of these and other decisions has been to give an indictment a presumptive standing, as a charge of crime against the alleged fugitive from justice, a far superior influence over an affidavit, characterized by the court of last resort of New York, as merely an "*ex parte* statement of the accuser." If the arrest and return of a fugitive criminal is sought by the authorities of a State and an affidavit is made the basis of the charge of crime, too much care cannot be taken in the drawing of the formal charge against such fugitive, for when the affidavit arrives in the surrendering State a vigorous and skillful attack, upon its validity and legality, may be expected by learned counsel retained by the fugitive. And while the court may not hear evidence relating to the merits of the charge, the affidavit itself will be assaulted from all conceivable angles and very often a sympathetic judge will join in the onslaught, the end of the conflict comes when the court declares that the so-called affidavit does not *charge a crime* in accordance with laws of the demanding State, and the alleged fugitive and criminal goes free.

§ 157. The Court Often Misled.—In the course of a busy practice during the past few years, in the second largest city of the Union, as an assistant state's attorney, in charge of interstate rendition, it has been noticed, with considerable surprise and interest, the tendency of some *nisi prius* judges to permit attorneys, representing

fugitives from justice, in *habeas corpus* proceedings, to present certain inadmissible proofs, by way of pleadings, affidavits or argument, the manifest purpose of which is to generate a doubt in the mind of the court as to the guilt of the accused. The result of this practice has been known to influence the court in favor of the fugitive in deciding certain questions, legal and otherwise, raised by the respondent's return to the writ of *habeas corpus*, and relator's traverse to the return. All judges are but human and while *all* may not be swayed by such methods, it must be conceded that *some*, at least, are led away from the issues raised by the pleadings by pure sympathy, which frequently produce a doubt in the court's mind as to the guilt of the accused of the crime charged in the demanding State.

§ 158. **Federal Rule Reasonable.**—In this connection it has been thought proper to say, that, it has been contended by many of the ablest jurists of the United States, that to be merely *charged* with crime, ought not to be sufficient ground upon which to base rendition, arguing that the doctrine of "probable cause" should prevail, and that before an alleged fugitive is ordered deported from one State to another, "probable cause," should be shown that the accused has committed the crime as charged. This humane and reasonable rule prevails when a Federal prisoner is charged with crime, under the laws of the United States, and is arrested in another district or State than the one where the crime is alleged to have been committed. This is a just and safe procedure and should be applied to interstate rendition.

CHAPTER XIX.

POWER TO REVIEW BY HABEAS CORPUS.

- § 159. Jurisdiction of the Judiciary.
- § 160. Federal Law on Rendition Silent as to Habeas Corpus.
- § 161. Power of State Courts Derived from State Statutes.
- § 162. Early Federal View.
- § 163. Decisions of State Courts.
 - 1. New York.
 - 2. Florida.
 - 3. Texas.
 - 4. Iowa.
 - 5. Connecticut.
 - 6. Alabama.
- § 164. The Supreme Court on Power of Review.
- § 165. Federal and State Courts Invested with Right.
- § 166. All Doubt Removed.

§ 159. **The Jurisdiction of the Judiciary.**—The power and authority of the courts, Federal and State, in interstate rendition proceedings, to review by *habeas corpus* the finding of the governor of the asylum State, is now no longer a controverted question. The authorities are practically unanimous in upholding this right, and the courts may, with perfect freedom, overrule the action of the governor in issuing his warrant of rendition, for the alleged fugitive from justice, if the law and the facts do not justify him in so doing. The courts, in exercising this jurisdiction, are not invading the sanctity of a co-ordinate branch of the government, but simply protecting the citizen, the most sacred of all duties, against unlawful arrest and deportation. If the warrant of rendition is not issued in strict compliance with every requirement of the United States Constitution, and the act of Congress of 1793, relating to fugitives from justice, then the governor's determination of the questions before him and his warrant of arrest are void and of no effect. Only

a judicial inquiry, sanctioned by law, is authorized to supervise the findings of the governor of the asylum State, such an inquiry can only result from the issuance of a writ of *habeas corpus*, predicated upon a proper showing in the form of a petition, the bringing of the alleged fugitive into court and the ascertainment of the cause of his caption and detention, and should it be found upon the hearing that the restraint was without legal authority then to immediately discharge him. (*In re Manchester*, (1855), 5 Cal. 238.)

Pending this hearing the accused or fugitive is entitled to be enlarged upon bail, with such surety or sureties and in such sum as the judge or court may think proper, conditioned upon his appearance before such judge or court, to do and receive what may be considered in that behalf. In the case of *Wright v. Henkle*, (1903), 190 U. S. 40, the right to take bail was referred to by Mr. Chief Justice Fuller as follows:

“We are unwilling to hold that the circuit courts possess no power in respect of admitting to bail other than specifically vested by statute, or that, while bail should not ordinarily be granted in cases of foreign extradition, those courts may not in any case, and whatever the special circumstances, extend that relief.”

In practically all of the States of the Union, save possibly Mississippi and Texas, the right to bail in rendition procedure by *habeas corpus* is fully established by statutory enactments. See *Ex parte Wall*, (1904), 84 Miss. 783, and *Ex parte Erwin*, (1879), 7 Tex. App. 288, both cases holding that it was not intended by the provisions of the Constitution of the United States that a fugitive from justice should be enlarged on bail at all pending appeal. This ruling is contrary to the general practice and contrary to the very spirit and intent of the law. If no statute had been enacted by the States on this subject, the inherent and common law jurisdiction of the judges and courts would be sufficient authority for the exercise of the power to release on bail the alleged fugitive, pending hearing on *habeas corpus* or appeal.

Bail rests on the common law except as the statute controls, and that court has the right to enlarge one on bail which has the power to try and determine the case.

See *Wright v. Henkle*, (1903), *supra*; *In re Mitchell*, (1909), 171 Fed. 289; *State v. Vaughan*, (1898), 71 Conn. 457; *Ex parte Doyle*, (1907), 62 W. Va. 280.

It was held in *People ex rel. Tweed v. Liscomb*, (1875), 60 N. Y. 560, by the court of appeals of New York, that, "This writ of *habeas corpus* cannot be abrogated, or its efficiency curtailed, by legislative action. * * * The remedy against illegal imprisonment by this writ, as it was known and used at common law, is placed beyond the pale of legislative discretion, except that it may be suspended in emergencies named in the Constitution."

§ 160. Federal Law on Rendition Silent as to Habeas Corpus.—It will be observed by a casual glance at clause 2, section 2, article IV, of the United States Constitution, and the act of Congress of 1793, that no mention is made therein of the writ of *habeas corpus*, nor is any method suggested for a review of the governor's action in causing the arrest and detention of the fugitive from justice. However, section 753 of the Revised Statutes of the United States, names the classes of cases in which the Federal Courts, "or any justice or judge thereof," may, upon proper showing, issue writs of *habeas corpus*. One of the classes named in this statute embraces any such in which the accused "is in custody under or by color of the authority of the United States." A person arrested and held as a fugitive from justice by virtue of the governor's warrant of rendition, is clearly within this description, and the right of the Federal court, or any justice or judge thereof, to issue a writ of *habeas corpus* and to consider and determine the legality of his detention, is unquestioned.

§ 161. Power of State Courts Derived from State Statutes.—The State courts derive their jurisdiction from the common law and from statutory enactments of the different State legislatures, which have provided for a

judicial hearing wherever personal liberty is involved. Therefore the alleged fugitive from justice, when under arrest in the State where found, can invoke the power of the writ of *habeas corpus*, that the legality of his arrest and proposed deportation may be judicially determined. Congress of the United States, or any State legislature, might enact a law specifically excluding all fugitives from justice, from the benefits of the writ of *habeas corpus*, unless restrained by constitutional provision, this would make the finding of the governor of the asylum State, so far as fugitives from justice are concerned, absolutely conclusive. The nearest approach to such legislation is to be found in the State of Arkansas. In Kirby's Digest of the Statutes of Arkansas, 1906, chapter 77, on *habeas corpus*, section 3862, provides that "it shall be the duty of the judge forthwith to remand the prisoner if it shall appear that he is held in custody * * * for any treason, felony or other high misdemeanor committed in any other State or Territory, and who, by the Constitution and laws of the United States ought to be delivered up to the legal authorities of such State or Territory." This statute in Arkansas according to the ruling of the courts, operates as a complete suspension of the writ of *habeas corpus* in interstate rendition cases; while in the State of Illinois, a similar worded statute, is regarded as upholding the right of the courts to *do* the very thing that is *prohibited* in Arkansas. In the State of Pennsylvania, the only and sole question that can be raised on *habeas corpus*, in accordance with the statutes of that State, is the identity of the alleged fugitive from justice. The supreme court of Pennsylvania, in *Commonwealth v. Superintendent of Philadelphia County Prison*, (1908), 220 Pa. St. 410, 69 Atl. 916, declined to pass upon the constitutionality of the act of May 24, 1878, the Statute restricting the hearing on *habeas corpus* to the question of identity, because fugitives were allowed every opportunity to show the illegality of the rendition in the courts of that State.

In Indiana it is provided by statute that, every fugitive

from justice arrested in that State by virtue of the governor's warrant, shall forthwith be taken before a circuit or criminal court, that his identity may be inquired into and if found to be the identical person demanded, he shall at once be delivered to the agent of the demanding State, for deportation; but should it appear to the judge holding the examination, that the alleged fugitive was in the State of Indiana at the time of the commission of the alleged offense and not in the State or Territory from which he is pretended to have fled, then he shall at once be discharged by such judge, who shall forthwith report the facts to the governor.

§ 162. **Early Federal View.**—It is noticeable that prior to the hearing of the celebrated "Mormon Prophet" case, *Ex parte* Joseph Smith, (1842), 3 McLean, 121, in the United States circuit court, at Chicago, Illinois, the power of the courts to review the determination of the governor, as to whether the accused was a fugitive from the justice of the State or Territory demanding his arrest and return, and as to whether he was legally charged with the commission of a crime in such jurisdiction, was rarely exercised; some courts even contending that the action of the governor in such cases was conclusive and therefore not reviewable by the judiciary. *Ex parte* Willard and Wife, (1814), Sergt. Const. Law, 395; *State v. Schlemm*, (1846), 4 Harr. 572; *People ex rel. Draper v. Pinkerton*, (1879), 77 N. Y. 245, 17 Hun. 199. But the decision of Judge Pope, then United States district judge for Illinois, and acting United States circuit judge, was an able and exhaustive exposition of the rights of the fugitives from justice, under the Constitution and laws of the United States. It was held by him that the latter had a right to show in a judicial investigation, by *habeas corpus*, that he was not, in fact, a fugitive from justice, and that he was not legally charged with the commission of crime in the demanding State, and that the Federal, as well as the State courts, were invested by law with the authority to review the findings of the governor, to declare his warrant of rendition void and

to discharge the alleged fugitive. In the course of his opinion Judge Pope said:

“In supporting the second point, the attorney-general seemed to urge that there was greater sanctity in a warrant issued by the governor, than by an inferior officer. The court cannot assent to this distinction. This is a government of laws, which prescribes a rule of action as obligatory upon the governor as upon the most obscure officer. The character and purposes of the *habeas corpus* are greatly misunderstood by those who suppose that it does not review the acts of an executive functionary. All who are familiar with English history, must know that it was extorted from an arbitrary monarch, and that it was hailed as second Magna Charta, and that it was to protect the subject from arbitrary imprisonment by the king and his minions which brought into existence that great palladium of liberty in the latter part of the reign of Charles II. It was indeed a magnificent achievement over arbitrary power. Magna Charta established the principles of liberty; the *habeas corpus* protected them. It matters not how great or obscure the prisoner, how great or obscure the prison-keeper, this munificent writ, wielded by an independent judge, reaches all. It penetrates alike the royal towers and the local prisons, from the garret to the secret recesses of the dungeon. All doors fly open at its command, and the shackles fall from the limbs of prisoners of state as readily as from those committed by subordinate officers. The warrant of the King and his secretary of state could claim no more exemption from that searching inquiry, “The cause of his caption and detention,” than a warrant granted by a justice of the peace. It is contended that the United States is a government of granted powers, and that no department of it can exercise powers not granted. This is true. But the grant is to be found in the 2nd section of the 3rd article of the Constitution of the United States: “The judicial power shall extend to all cases in law or equity arising under this Constitution, and laws of the United States and treaties

made, and which shall be made under their authority.”

§ 163. **Decisions of State Courts.—(1.) New York.**—Judge Westbrook, of the supreme court of the State of New York, in referring to the power of the judiciary to review the action of the governor in interstate rendition by *habeas corpus*, in the Matter of Briscoe, (1876), 51 How. Pr. 422, said:

“The executive is not infallible. He may err and issue his warrant when he ought not to issue it, and if the citizen has no right to prosecute this writ, but must submit to this executive order, then it is clear that we have one officer in a State, organized under a republican form of government, who can hold at pleasure and remove at his will beyond the jurisdiction of the State every citizen, and whose action cannot be questioned or reviewed. This is simple tyranny, and the statement of the proposition would, we are certain, cause the present executive, as well as the court, to reject it as entirely unsound.”

In a later case *People ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 182, 64 N. E. 825, 60 L. R. A. 774, 92 Am. St. 706, affirmed by the Supreme Court of the United States, *Hyatt v. People ex rel. Corkran*, (1903), 188 U. S. 691, Judge Cullen, speaking for the court of appeals of New York, after a careful review of other questions presented, said:

“We now reach the question whether the action of the governor may be reviewed on *habeas corpus*. It has been held by the Supreme Court of the United States in *Robb v. Connolly*, (1884), 111 U. S. 624, that the governor of a State in the exercise of the duty of surrendering fugitives imposed by the Constitution and statute of Congress does not act as a United States officer and that a writ of *habeas corpus* may be issued by the State courts to test the validity of an arrest under his warrant. In *Roberts v. Reilly*, (1885), 116 U. S. 80, the same court said, ‘How far his (the governor’s) decision may be reviewed judicially in proceedings in *habeas corpus*. or whether it is not conclusive, are questions not

settled by harmonious judicial decisions, nor by any authoritative judgment of this court.' In *Cook v. Hart*, (1892), 146 U. S. 183, it was held by the same court: 'We have no doubt that the governor upon whom the demand is made must determine for himself, in the first instance at least, whether the party charged is in fact a fugitive from justice, but whether his decision thereon be final is a question proper to be determined by the courts of that State.' The Constitution and laws of the State of New York, therefore, control the decision of the question we are now considering. While doubtless to a certain extent the action of the governor is executive or ministerial, it is not so in the broad sense in which the general functions of the office are conferred upon him by our Constitution. In *Matter of Guden*, (1902), 171 N. Y. 529, we held that the power given to the governor to remove a sheriff upon charges and after a hearing was executive and the exercise of that power given to the governor was not subject to review by the courts. But the question here is of an entirely different character. It involves the liberty of the citizen. Speaking of division of powers among the three branches of the government, Parker, C. J., in the *Guden* case said: 'There resides in the people of this and every State an absolute power to prescribe rules of action, through legislation, to enforce rules of action and to transact generally the affairs of government, through executive acts, and to determine controversies between, enforce rights belonging to and redress wrongs done to, citizens of the State, through the courts.' The liability of the citizen to arrest and detention, and the grounds therefore, therefore, necessarily present a judicial question, though the arrest and detention are effected by an executive or ministerial officer. The act of Congress provides that a copy of an indictment or the affidavit made before a magistrate shall be proof of the charge of crime against any person whose extradition is sought, but it does not prescribe what shall be evidence that he is a fugitive from justice. The fact therefore that he is a fugitive is a matter of proof. While the warrant of the governor is presumptive

evidence of the fact, there is no reason on principle why it should be conclusive. It was said by Judge Jenkins in *In re Cook*, (1892), 49 Fed. 833, referring to case of *Roberts v. Reilly*, (1885), *supra*, 'That decision by its very terms implies that the action of the governor is only presumptively regular, and can be reviewed by the courts. Surely it cannot be claimed that such action is conclusive upon personal rights, and may not be inquired of by judicial tribunals. Surely it cannot be that the right of personal liberty hangs upon so slender a thread as the arbitrary will of the authorities of the demanding and surrendering States. *No person shall be deprived of life, liberty or property without due process of law.* That is the fundamental law of the land, coming to us from Magna Charta. It is not due process of law which condemns without a hearing, which convicts without a trial. It is essential to compliance with such executive demand that the person whose surrender is demanded shall be adjudged a fugitive from the justice of the demanding State. The decision of the executive is not conclusive of that fact.' The writ of *habeas corpus* is in this State available to every person imprisoned or deprived of his liberty, unless he is restrained under the authority of the Federal government or unless he is committed by virtue of a final judgment or decree of a competent tribunal of jurisdiction, or the final order of such tribunal punishing him for contempt. The warrant of the governor is not a final judgment nor a decree, and even were it such it would be the duty of the court to see whether the jurisdictional facts exist which are necessary to authorize the action of the governor.'

(2.) **Florida.**—A case that is frequently cited, *Ex parte Powell*, (1884), 20 Fla. 806, the supreme court of Florida, in a well-considered opinion, on the conclusiveness of the governor's determination in interstate rendition, said:

"The judgment of the executive of the demanding State, or of the executive of this State, though entitled to great deference, is not by any means con-

clusive as to the sufficiency of the cause shown for extradition. The books are thronged with cases in which the courts have made the inquiry and decided upon the sufficiency of the cause, and in a great majority of cases have sustained the arrest upon full investigation. This very fact is authority to sustain the power of the judiciary to make the inquiry. Any other view would make the executive authority omnipotent, and emasculate, to a great extent, the writ of *habeas corpus*, whereby the citizen is assured that he shall not be deprived of his liberty but by the law of the land. To this end he may demand that the law be strictly construed, and that is all that is involved in the present inquiry."

(3.) **Texas.**—Judge Henderson, one of the justices of the criminal court of appeals of the State of Texas, in delivering an opinion in *Ex parte Cheatham*, (1906), 50 Tex. Crim. 58, 95 S. W. 1077, said:

"It is a matter of some delicacy to review the action of the executive of this State in granting his warrant of extradition. However this is a duty of the courts, and involves a responsibility cast upon them, which they are required to meet. We cannot assent to the claim that the act of the executive in granting an extradition warrant cannot be inquired into. A removal of a person from this State for whom the writ of extradition has been granted is summary in its character, and the provisions of the act of Congress must be strictly complied with. If a person has committed a crime in one State, and fled to another, the demanding State is required to pursue those provisions of the laws of Congress which authorize the warrant of extradition to issue. These provisions are plain, and can easily be followed. No State should permit itself to be made the harbor or refuge for criminals of other States. On the other hand the liberty of the citizen is involved, and the provisions of law which Congress has erected for his safeguard, should be respected and complied with. These provisions are intended for the protection of the citizen against undue arrest and extradition, and the writ of *habeas corpus* is

provided, in order to protect the humblest as well as the highest in his or her rights and privileges."

(4.) **Iowa.**—In the State of Iowa, the supreme court in *Harris v. Magee*, (1911), 150 Iowa, 147, 129 N. W. 742, referring to the jurisdiction of the courts of that State to review the action of the governor in issuing his warrant for the arrest and surrender of fugitives from justice, said:

"It must be borne in mind that the purpose of this *habeas corpus* proceeding is in the nature of a review of the legality of the action of the governor in issuing a warrant of extradition. It was not incumbent upon the governor to try the question of the guilt or innocence of the petitioner, or to hear evidence thereon, except so far as it might be necessary to determine the question whether he was a fugitive from justice. The identity of the prisoner could be inquired into. Whether the venue of the crime charged was properly laid within the demanding State would also be a proper inquiry."

(5.) **Connecticut.**—In *Farrell v. Hawley*, (1905), 78 Conn. 155, 112 Am. St. 125, the supreme court of Connecticut speaking through Mr. Justice Baldwin, who rendered the opinion of the court, said:

"The finding of the governor in extradition cases is not always and necessarily final. That now in question could have been pronounced insufficient to support an arrest under the warrant, upon conclusive proof before the courts in this proceeding, first, that the plaintiff (the fugitive) was not within the State of New York at the date when it was charged that the crime was committed, and, second, that there was no evidence to the contrary, or none worth serious consideration, before the governor."

(6.) **Alabama.**—A case that has attracted very general attention throughout the country is that of *In re Mohr*, (1883), 73 Ala. 513, 49 Am. Rep. 63, Mr. Justice Somerville, delivered the opinion of the supreme court and upon the right to review the governor's determination to issue his warrant of rendition, said:

“We are of opinion that it was never intended by Congress in their enactment of the law of 1793, that the finding of a governor of a State, that one is a fugitive from justice should be conclusive evidence of the fact, incapable of contradiction by facts showing to the contrary. It is an important feature of the law, throwing some light upon its proper construction, that while it expressly prescribes the mode by which evidence of the charge of crime shall be authenticated, it no where prescribes how the fact that he is a fugitive from justice shall be established. There seems to us to have been a good and sufficient reason for this distinction. Nothing was more proper than the policy of precluding the fugitive from disputing the certified records from the courts of a sister State, in view of the constitutional requirement, that ‘full faith and credit’ shall be given in each State to ‘the records and judicial proceedings of every other State.’ Const. U. S. article IV, section 1. But no such reason applies to the implication of the defendant’s being a fugitive, because he is found in another State than the one in whose courts the charge is pending. It may be asserted that it was within the power of the governor to investigate this fact before he issued the warrant, so as to satisfy himself of its truth. Perhaps this is the correct view, but this duty must, in its very nature, be discretionary. In practice, the fact of the criminal’s flight is usually shown by affidavit, but this cannot be regarded as conclusive upon any principle known to us, in the absence of statutory regulation so declaring the law. The better view seems to us to be, that one of the purposes of premitting express congressional legislation on this point was to refer the matter to executive determination, subject to review by *habeas corpus* in the courts in all proper cases.”

§ 164. The Supreme Court on Power of Review.—How has the Supreme Court of the United States viewed this question? It has been contended that a shade of doubt permeates certain decisions of that court, as to the extent of the judicial right to inquire into the determination

by the executive authority of the asylum State, that the accused person is a fugitive from the justice of the demanding State, and just how far this decision might be reviewed judicially, in proceedings in *habeas corpus*, or whether it was conclusive or not, as stated by that court in *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544, were questions not settled by harmonious judicial decisions nor by any authoritative judgment of that court. However, a careful examination of the decisions of that court, for the past thirty years, will demonstrate beyond question that, there is little foundation for such doubt. For example, take the concluding paragraph of the opinion in the case just cited, it is said by the court:

“It is conceded that the determination of the fact by the executive of the State in issuing his warrant of arrest, upon a demand made upon that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal, until the presumption in its favor is overthrown by contrary proof.”

§ 165. Federal and State Courts Invested with Right.

—Other utterances of that court have been so pronounced as to remove all uncertainty, as to the ruling of the court, on the power of the judiciary to review, and even nullify, any action of the governor of the asylum State, in interstate rendition procedure. A case in point to which special attention is directed is that of *Robb v. Connolly*, (1884), 111 U. S. 624, 4 Sup. Ct. 544, 28 L. ed. 542, wherein the Supreme Court of the United States, upon a writ of error, to the supreme court of the State of California, held that, Congress had not undertaken to invest the judicial tribunals of the United States with exclusive jurisdiction of issuing writs of *habeas corpus* in proceedings for the arrest of fugitives from justice and their delivery to the authorities of the State in which they stand charged with crime. Mr. Justice Harlan, speaking for the court, said:

“Upon the United States, equally with the courts

of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for, the judges of the State courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United States, made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, any thing in the Constitution or laws of any State to the contrary notwithstanding. If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided, to this court for final and conclusive determination. The recognition, therefore, of the authority of a State court, or one of its judges, upon writ of *habeas corpus*, to pass upon the legality of the imprisonment, within the territory of that State, of a person held in custody—otherwise than under the judgment or orders of the judicial tribunals of the United States, or by the order of a commissioner of a circuit court, or by officers of the United States acting under their laws—cannot be denied merely because the proceedings involve the determination of rights, privileges, or immunities derived from the nation, or require a construction of the Constitution and laws of the United States.”

§ 166. **All Doubt Removed.**—The same court, one year after its decision in the case just cited, in *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. ed. 250, wherein Reggel was arrested in the Territory of Utah, charged with being a fugitive from the justice of the State of Pennsylvania, where an indictment was pending against him in the courts of that State for obtaining goods under false pretenses. Reggel sued out a writ of *habeas corpus*, in the district court of the United States for the district of Utah, and upon a hearing was remanded and ordered to be surrendered to the messen-

ger from Pennsylvania. From this judgment an appeal was taken to the Supreme Court of the United States and Mr. Justice Harlan again delivered the opinion of the court. It had been strongly contended on behalf of the accused, that there was not sufficient evidence before the governor of Utah to establish the fact that he was a fugitive from the justice of Pennsylvania, and that obtaining goods under false pretenses, in Pennsylvania, was only a misdemeanor and therefore not such a crime under the Federal law for which his rendition could be asked.

The learned jurist brushed aside the last contention by declaring that the crime charged against the fugitive was such an offense for which his arrest and surrender could be demanded and included "every offense against the laws of the demanding State, without exception as to the nature of the crime." As to the other contention, the lack of sufficient evidence before the governor of Utah that the accused was a fugitive from the justice of the demanding State, the court overruled this objection in the following language, (which is sometimes referred to as authority for doubting the right of the courts to review the governor's determination of this question of fact:)

"If the determination of that fact by the governor of Utah upon evidence introduced before him, is subject to judicial review, upon *habeas corpus*, the accused, in custody under his warrant—which recites the demand of the governor of Pennsylvania, accompanied by an authentic indictment charging him substantially in the language of her statutes, with a specific crime committed in her limits—should not be discharged merely because, in the judgment of the court, the evidence as to his being a fugitive from justice was not as full as might properly have been required, or because it was so meagre as, perhaps, to admit of a conclusion different from that reached by him. In the present case, the proof before the governor of Utah may be deemed sufficient to make a *prima facie* case against the appellant, as

a fugitive from justice, within the meaning of the act of Congress."

Special attention is directed to the case of *Roberts v. Reilly*, *supra*, where practically the same questions were raised, it was held by the Supreme Court of the United States, that whenever the governor of the State, upon whom a demand has been made, causes the arrest, for deportation, of a person charged as a fugitive from justice of another State, the prisoner is held in custody only under color of authority derived from the Constitution and laws of the United States, and is entitled to invoke the judgment of the tribunals, whether of the State or the United States, by the writ of *habeas corpus*, upon the lawfulness of his arrest and imprisonment. The court expressly reiterating the declaration in *Robb v. Connolly*, *supra*, that the jurisdiction of State courts is not excluded in such cases.

CHAPTER XX.

RENDITION: PLEADING AND PRACTICE.

- § 167. Relief from Illegal Arrest.
- § 168. The U. S. Supreme Court Sustains this View.
- § 169. Waiver of Rights. Relator and Respondent.
- § 170. Petition for the Writ.
- § 171. Respondent's Return to the Writ.
- § 172. Relator's Traverse.
- § 173. At Hearing How Papers May Be Produced.
- § 174. Pleading and Issue.
- § 175. The Hearing.
- § 176. The Order of Discharge May Be Vacated.
- § 177. Form of Petition to United States Judge.
- § 178. Form of Writ in United States Courts.
- § 179. Form of Petition for Writ to State Court or Judge.
- § 180. Form of State Writ of Habeas Corpus.
- § 181. Form of Officer's Return to the Writ.
- § 182. Form of Prisoner's Traverse.
- § 183. Suggestions for Resisting Rendition:
 - 1. Identity.
 - 2. Arrest.
 - 3. Arrest Prior to Demand.
 - 4. Governor's Warrant of Rendition.
 - 5. Requisites of the Papers.
 - 6. Charge of Crime.
 - 7. Information and Belief.
 - 8. The Authentication.
 - 9. Jurisdictional Question.
 - 10. Physical Presence Necessary.
 - 11. "Complaint."
 - 12. Information.
 - 13. Information Instead of Indictment.
 - 14. Governor must Personally Sign Warrant.
 - 15. "Great Seal" of State.
 - 16. When Accused not a Fugitive.
 - 17. Mob Violence.
 - 18. Failure to Annex Charge of Crime.
 - 19. Accused and Charged with Crime, a Distinction.
- § 184. Final Appeal to U. S. Supreme Court.
- § 185. Appeal in State Courts.
 - 1. States Holding Writ Reviewable.
 - 2. States Holding Writ not Reviewable.

§ 167. **Relief from Illegal Arrest.**—When a person is arrested as a fugitive from the justice of another State, and is held in custody by the authorities of the State in which he is found, charged with the commission of a crime in the State from which he is alleged to have fled, what step can the accused take to have determined the legality of his arrest and detention? It is a general and unquestioned principle in the jurisprudence of the United States, both Federal and State, that, where a person is by force deprived of his liberty, a judge or court having the power under the law to issue writs of *habeas corpus*, may and shall, upon the necessary showing by petition of such person, issue or cause to be issued a writ of *habeas corpus*; and a hearing had as to the legality of the arrest and restraint. And on such hearing should it appear that the detention is without warrant of law, then and in that event the judge or court is authorized to grant summary relief by ordering the immediate discharge of the accused. From this just and humane principle, based on the civilization of centuries, it naturally follows that an alleged fugitive from justice arrested in one State, charged with a crime in another State, may, beyond all question, sue out a writ of *habeas corpus* and have settled by the courts of the State wherein the arrest is made the lawfulness of his arrest and imprisonment, and on such hearing the judge or court cannot take judicial notice of the law of the demanding State, and in the absence of proof, the presumption is that the courts of that State agree with the courts of the surrendering State in declaring and interpreting the common law. People *ex rel.* Lawrence v. Brady, (1874), 56 N. Y. 182.

§ 168. **The U. S. Supreme Court Sustains this View.**—Mr. Justice Harlan of the Supreme Court of the United States, in the case of Robb v. Connolly, (1884), 111 U. S. 624, in the course of an exhaustive opinion on the power and authority of State and Federal courts to issue writs of *habeas corpus* in rendition cases, strongly up-

held the authority of the State courts or judges, upon *habeas corpus*, to compel the production of alleged fugitives from justice arrested and held in custody in the asylum State, and the right of such courts or judges to determine the legality of the arrest and detention, and "to discharge the fugitive, if it be ascertained that such restraint is illegal; and this, notwithstanding, such illegality may arise from a violation of the Constitution or laws of the United States." In a later case before the same court, *People ex rel. McNichols v. Pease*, (1907), 207 U. S. 110, Mr. Justice Harlan, speaking for a unanimous court, held that, "one arrested and held as a fugitive from justice is entitled, of right, upon *habeas corpus* to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from the justice of the demanding State, and thereby overcoming the presumption to the contrary arising from the face of the extradition warrant."

§ 169. Waiver of Rights. Relator and Respondent.—The lack of familiarity with the forms of pleading and practice on *habeas corpus*, in interstate rendition proceedings, has frequently resulted in the waiving of certain substantial rights of the accused or in their complete loss. The pleading and practice in such proceedings are very simple but very exacting. The parties to the action are, first, the prisoner or fugitive, who petitions for the writ and prays for relief, he is known as the *relator*; and, second, the officer or agent of the demanding State, or other person, who holds the alleged fugitive in custody, is the *respondent*. The relator or accused is entitled to be represented by counsel at all such hearings, as well as the respondent.

§ 170. The Petition for the Writ.—The first step towards the adjudication of the question, as to whether the alleged fugitive is legally held in custody, is the preparation and presentation to the judge or court, having au-

thority to issue writs of *habeas corpus*, of a petition, signed and sworn to by the accused, or some one in his behalf, setting forth the illegality of such arrest and detention; and should the facts and circumstances enumerated therein, satisfy the judge or court that a sufficient *prima facie* showing had been made to entitle the petitioner or relator to the relief sought, then it becomes the duty of the judge or court to issue, or cause to be issued, a writ of *habeas corpus*, and fix a time and place for the hearing. In Federal courts this petition must be sworn to by the party in person who seeks relief. In State courts the petition can be sworn to by the fugitive or any person in his behalf as the particular State statute prescribes.

§ 171. **Respondent's Return to the Writ.**—At the designated time and place the officer or agent of the demanding State, or other person having the alleged fugitive in custody must bring him in person before the judge or court, make answer on oath to the writ of *habeas corpus*, in the form of a return, in writing, showing by what authority he arrested the accused and why he holds him in custody. If the fugitive was arrested by virtue of the governor's warrant of rendition, then the process itself must be produced, as well as all other papers coming into the hands of the officer making the arrest. However, neither the officer nor the agent of the demanding State, or other person can be compelled to produce with the return copies of the requisition and accompanying papers from the demanding State. (Matter of Sylvester, (1899), 21 Wash. 263, 57 Pac. 829, *citing In re Leary*, (1879), 10 Ben. (U. S.) 197, and *Leary's Case*, (1879), 6 Abb. N. C. (N. Y.) 44.) But should copies of such requisition and accompanying papers from the demanding State, upon which the governor's warrant of rendition is pedicated, be accessible to the respondent, he should in the interest of justice and fair play, attach such documents to his return, that their validity and the legality of the governor's action thereon,

may be fully reviewed upon the hearing by the judge or court.

§ 172. Relator's Traverse.—The return of the respondent is followed by the exceptions or traverse of the petitioner or relator. Exceptions raise questions of law and a traverse raise both questions of law and issues of fact. In a majority of the States only the traverse is known to the pleading in *habeas corpus* proceedings. When the return of the respondent sets forth the process upon which the relator is held in custody and on its face shows good ground for holding the prisoner, such process being produced on the hearing and the traverse of the relator alleges matter tending to invalidate the apparent effect of such process, the burden of proof is on the relator to establish by proper evidence the allegations of the traverse. It frequently happens that by agreement of the parties, respondent and relator, with the consent of the judge or court, the original petition for the writ is accepted and treated as a traverse. This however, does not require the respondent to file, in addition to his return a pleading specifically denying the affirmative allegations of such petition, (accepted as relator's traverse), nor does it, by any means, shift the burden of proof as to such allegations from the relator to the respondent. It has been held by the supreme court of the State of California, and this is the law beyond all doubt, that where the relator's traverse does not dispute the recitals, in a warrant of rendition that the requisition was accompanied by a complaint and information, affidavits and warrant of arrest, then such recitals are to be taken as conclusive on a writ of *habeas corpus* in interstate rendition proceedings. *Ex parte Lewis*, (1889), 79 Cal. 95, 21 Pac. 553; *Thorp v. Metzger*, (1913) 77 Wash. 62, 137 Pac. 330.

§ 173. At Hearing How Papers May Be Produced.—But should the requisition and the accompanying papers from the demanding State, be not produced by the respondent, then the only other method of getting these

documents before the court, known to the law, is for the relator to secure certified copies from the proper official and attach them to his traverse, thereby making them a part of the record of the case. When these papers are arbitrarily withheld by the officials, as is done in the State of New York, the only questions that can be raised by the pleadings, in their absence, are, first, the regularity of the governor's warrant; second, the identity of the accused; and third, is the party arrested and held in custody a fugitive from the justice of the State demanding his arrest and return?

§ 174. **Pleading and Issue.**—It is not unusual, by agreement of the parties, with the consent of the court, that the return of the respondent and the traverse of the relator are made *ore tenus*, this being done for the purpose of saving time. A supplementary or amended return may be filed by the respondent, at any time before the hearing, or during the progress of the hearing, by consent of the court, and the same privilege is accorded the relator to file an additional traverse to the amended return of the respondent. The return and the traverse constitute all the pleading in interstate rendition proceedings on *habeas corpus*, and issue is joined when these are properly filed before the judge or court, before whom the writ is returnable. The scope of the inquiry on *habeas corpus* is thus circumscribed and limited to such questions of law and fact, as are raised by the pleading; yet, any apparent irregularity or illegality in the governor's warrant of rendition, or other papers, properly before the judge or court, may be passed upon judicially, without being questioned in the pleading, for the reason that the judge or court finding that the governor's warrant and other papers from the demanding State, do not comply with the Constitution and laws of the United States, may declare the "caption and detention" of the fugitive wholly illegal and without warrant of law.

§ 175. **The Hearing.**—The hearing before the judge or court before whom the writ of *habeas corpus* is return-

able is the means of determining whether the alleged fugitive from justice is or is not unlawfully restrained of his liberty. The competency of the relator as a witness in his own behalf is governed by the laws of the State wherein such trial may be had. In Federal courts he is a competent witness in his own behalf. Such restraint is unlawful *unless* the requisition and papers accompanying the same, meet all the requirements of the law on interstate rendition; *unless* the indictment or affidavit substantially charges a crime committed by the accused against the laws of the demanding State; and, *unless* the accused is shown to have been physically and personally present in the demanding State when the alleged crime was committed. These are the elements required by the Constitution and laws of the United States as a prerequisite to interstate rendition, and *unless* each element is present, clearly and positively, there can be no lawful surrender of the accused to the authorities of another State.

The burden of proof rests on the accused or the relator, every affirmative allegation made by him in his traverse must be sustained by satisfactory evidence—oral or documentary—otherwise the writ must be quashed and the relator remanded. There is but one exception to this rule, and that is, when the accused or relator denies his identity, then and in that event, the burden is upon the authorities of the demanding State or the respondent, to establish the fact, by competent evidence, that the accused is the identical person charged with crime in the demanding State, named in the requisition and governor's warrant of rendition. Should the respondent fail to establish the identity of the accused then he is detained without authority of law, and the peremptory discharge of the alleged fugitive from justice must follow.

§ 176. The Order of Discharge May be Vacated.—But after such discharge and after the prisoner has gone “hence without day,” the judge or court making the

original order of discharge may, upon motion and notice to the relator and for good cause vacate and set aside such order, the effect of which is the revival of the proceeding in *habeas corpus* as it originally stood before the discharge of the prisoner. This motion must be made in term time. In *Tiberg v. Warren*, (1911), 192 Fed. 458, the United States district judge of the district of the State of Washington, had brought before him on a writ of *habeas corpus* an alleged fugitive from justice and after a hearing ordered his discharge. The following day a motion was made to vacate and set aside the order of discharge entered by the court on the previous day, the alleged fugitive being duly notified of such motion, and the court on hearing being fully satisfied that the order of the previous day discharging the prisoner was erroneous and without warrant of law—the same was vacated and set aside. This supplementary proceeding revived the *habeas corpus* and the entire issue and the cause was properly treated as though it were pending originally and the court held that it was unnecessary to rearrest the prisoner, the first arrest being in force.

§ 177. Form of Petition to United States Judge.

*To the Honorable A. B., Judge of the.....Court
of the United States for the.....District
of.....*

The petition of C. D. respectfully shows:

That he is now imprisoned and restrained of his liberty by E. F. (*sheriff, etc., or as the case may be*) at (*place of detention, if known*), in the.....of
....., in the county of....., in the State
of.....

That your petitioner is thus imprisoned and held in custody under color of the authority of the Constitution

and laws of the United States, relating to the return of fugitives from justice to the State or Territory from which they fled.

That said E. F. claims to hold in custody, and imprisonment your petitioner for the purpose of transporting him to the State of....., under and by virtue of a certain warrant or process of the tenor following: (*here set out the warrant, if no warrant, set forth the facts, if a copy of the warrant has been requested and refused, allege the fact and that the legal fees for copy were tendered, if there was any reason to fear that the prisoner would be removed from the jurisdiction before a copy of the Writ of Habeas Corpus could be obtained, so allege that fact or fear.*)

That said imprisonment is illegal and in violation of the Constitution and laws of the United States for the following reasons: (*here state the grounds on which it is claimed that the attempted rendition is illegal, as for example, that the prisoner is not the person named in said warrant or process, or that the prisoner is not legally charged with any crime in the State of.....; or that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States; or any other ground of illegality that may be claimed.*)

Wherefore your petitioner prays that a Writ of *Habeas Corpus* may issue out of the.....Court of the United States for the.....District of.....to the said E. F., requiring him to produce the body of your petitioner before said court at some convenient time to be therein designated, there to abide what shall be awarded by the court in the premises, and that your petitioner may be discharged from said imprisonment.

.....District of.....,}ss.

County of.....} On this.....day of

.....in the year 19...., before me personally came C. D. the above named petitioner, and, being by me

duly sworn, made oath that the foregoing petition by him subscribed is true in substance and in fact.

.....

§178. Form of the Writ in United States Courts.

UNITED STATES OF AMERICA.

The.....Court of the United States, for the
District of.....

The President of the United States of America.

To E. F., (sheriff, etc., or as the case may be):

We command you that you have the body of C. D., by you imprisoned and detained, as it is said, together with the cause of such imprisonment and detention, by whatever name the said C. D., may be called or charged, before the.....Court of the United States for theDistrict of....., on the..... day of....., in the year 19...., at....o'clockM., of said day, to do and receive what shall then and there be considered and adjudged concerning the said C. D., and have you then and there this writ.

Witness the Honorable.....Chief Justice of the Supreme Court of the United States, thisday of....., in the year one thousand nine hundred and....., and of the Independence of the United States the one hundred and.....

{ Seal of }
 { the court } Clerk.

.....District of.....,

I certify that the foregoing Writ was allowed by me.

.....,
Judge.

§ 179. Form of Petition for Writ to State Court Judge.

State of....., ss.
.....County. }

The People of the State of....., }
ex rel.....C. D..... } Petition for Habeas
vs. } Corpus.
.....E. F.....,..... }

To the Honorable A. B., Judge of the.....Court,
.....Judicial District, State of.....,
Presiding in the County of.....:

Your petitioner, C. D., of.....County of....., State of....., complaining, shows that he is detained and imprisoned in the jail of said county of....., by E. F.,of said county, on a charge of embezzlement said to have been committed by your petitioner in the State of Texas and from which said State your petitioner is charged with being a fugitive from justice, and for said alleged crime your petitioner is now being held by virtue of a certain warrant of rendition, for the arrest and deportation of your petitioner, issued by the Governor of....., which detention and imprisonment of your petitioner is unjust and contrary to law. (*If copy of warrant of rendition is in possession of petitioner it should be set out here in full.*)

And your petitioner further shows, that said imprisonment is illegal and in violation of the Statutes of this State for the following reasons: *(Here state the grounds on which it is claimed that the attempted rendition is illegal, for example, that the prisoner is not the party mentioned in the warrant; that the prisoner is not legally charged with crime in the State of.....; or that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States; or any other ground of illegality that may be claimed.)*

And your petitioner further shows, that he is not committed or detained by virtue of any process, judgment, decree or execution issued by any court or judge of the United States in a case where such court or judge has exclusive jurisdiction, nor by virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree, nor for any treason, felony, or other crime committed in any other State or Territory of the United States for which he ought, by the Constitution and laws of the United States, to be delivered up to the executive power of such State or Territory.

To be relieved from which said detention and imprisonment your petitioner now applies, praying that a Writ of *Habeas Corpus*, to be directed to the said E. F.,..... may issue in this behalf pursuant to the Statute in such case made and provided, so that your petitioner may be forthwith brought before this Honorable Court to do, submit to and receive what the law may require.

.....C. D.....

1. Affidavit to Petition.

State of.....,}ss.
.....County.}

.....C. D..... the petitioner above mentioned and named, being first duly sworn, on oath says, that he has heard read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated to be upon information and belief, and as to those matters he believes it to be true.

.....C. D.....

Subscribed and sworn to by the said C. D. this.....
day of.....A. D. 19...., before me,

.....
.....

To the Clerk of the.....Court of.....
county: Let Writ issue as prayed for in the foregoing
petition, returnable forthwith.

.....,
Judge.

**§ 180. Form of State Writ of Habeas Corpus.—(Illinois
Form.)**

State of Illinois,}ss. The People of the State of Illinois.
.....County.} To.....Greeting:

We Command You, That you do forthwith, without
excuse or delay, bring or cause to be brought before
Hon.....one of the judges of our.....
court of.....county, now in session at the Court
House in.....in said county of.....; the
body of..... by whatever name or addition he is
known or called, and who is unlawfully detained in your
custody (as it is represented unto.....one of the
judges of said court, by the petition of.....), to-
gether with the day and cause of caption and detention;
then and there to perform and abide such order and
directions as our said.....court of..... county
shall make in that behalf.

Hereof make due return forthwith under the penalty of
what the law directs.

Witness,, Clerk of our said.....

Court of.....county, and the seal there-
(seal) of, at....., in said county and State, this
.....day of.....A. D., 1915.

....., Clerk.

To the Sheriff of said county to deliver.

Under the statutes of Illinois this writ of habeas corpus
must have printed on the back thereof the following

words in large letters: "WRIT OF HABEAS CORPUS, by the habeas corpus act."

§ 181. Form of Officer's Return to the Writ.

State of.....,}ss. In the.....Court of
.....County.} said county.

I, E. F., Sheriff of said county, to whom the attached Writ of Habeas Corpus is directed, and in obedience to said Writ I herewith produce the body of the said C. D., arrested and held in custody by me. And for return to said Writ of Habeas Corpus I beg leave to say, that the said C. D., was arrested by me on the.....day of 19...., by virtue of the Governor's Warrant of Rendition, issued on the.....day of 19...., by the Honorable..... Governor of the State of....., and the said C. D., now in court in his own proper person, is the identical person named in said Governor's Warrant of Rendition and is now held in my custody by the authority of said process, which is attached herewith and made a part of this my Return.

.....,
Sheriff of.....County.

Subscribed and sworn to this the.....day of 19....

.....
.....

§ 182. Form of Prisoner's Traverse.

State of.....,}ss. In the.....Court of
.....County.}County.

The People ex rel. C. D.,
vs. No.....

E. F., Sheriff of.....county.

Now comes C. D., alleged to be a fugitive from justice and the Relator in the above entitled cause, in his own proper person and by his attorney, and for Traverse to

Respondent's Return to the Writ of Habeas Corpus herein, doth say, that his arrest and detention as such fugitive, are illegal and void for the following reasons: (*Here set forth specifically and minutely every allegation tending to show the illegality of the arrest and detention.*)

.....C. D.....

Sworn and subscribed to etc.

§ 183. Suggestions for Resisting Rendition.—After the accused has been taken in custody and is held as a fugitive from the justice of another State, and the cause of his "caption and detention" is made the subject of inquiry in the State where the arrest is made, on a writ of *habeas corpus*, the following suggestions for attack of the proposed rendition of the accused may be of service in preventing his illegal deportation:

1. Identity.

The accused in custody must be the identical person charged with crime in the demanding State, and named in the requisition and governor's warrant of rendition. *Robinson v. Flanders*, (1867), 29 Ind. 10; *Matter of Leary*, (1879), 10 Ben. (U. S.) 197; *People ex rel. Nubell v. Byrnes*, (1884), 33 Hun. 108, 2 N. Y. Crim. 398; *Gillis v. Leekley*, (1905), 38 Wash. 156, 80 Pac. 300; *State v. Bates*, (1907), 101 Minn. 303, 112 N. W. 260; *Barnes v. Nelson*, (1909), 23 S. D. 181, 121 N. W. 89; *Ex parte Spencer*, (1911), 34 Nev. 240, 117 Pac. 1; *Hyland v. Rochelle*, (1913), 179 Ind. 671, 100 N. E. 842.

2. Arrest.

The arrest of the fugitive must be in strict compliance with the Constitution and laws of the United States, as well as the statutes of the State wherein the arrest is made. *State v. Buzine*, (1846), 4 Harr. (Del.) 572; *State v. O'Conner*, (1888), 38 Minn. 243, 36 N. W. 462; *State v. Taylor*, (1898), 70 Vt. 1, 39 Atl. 447, 67 Am. St. 648;

State *ex rel.* Arnold v. Justus, (1901), 84 Minn. 237, 87 N. W. 770; State *ex rel.* Grass v. White, (1905), 40 Wash. 560, 82 Pac. 907; Vollmer v. County, (1913), 53 Ind. App. 149, 101 N. W. 321.

3. Arrest Prior to Demand.

If a provisional arrest, prior to the requisition from the demanding State, the affidavit on which the local warrant is based must make out a *prima facie* case of probable cause to justify the detention of the accused. Brockaway v. Crawford, (1856), 48 N. C. 433, 67 Am. Dec. 250; Cunningham v. Baker, (1893), 104 Ala. 160, 16 So. 60, 53 Am. St. 27; Simmons v. Vandyke, (1894), 138 Ind. 380, 37 N. E. 973, 26 L. R. A. 33; State v. Taylor, (1898), *supra*.

4. Governor's Warrant of Rendition.

If the arrest is made upon a governor's warrant of rendition it must show upon its face legality and regularity. *Ex parte* Thornton, (1853), 9 Tex. 635; *In re* Doo Woon, (1883), 18 Fed. 898; *Ex parte* Thomas, (1908), 53 Tex. Crim. 37, 108 S. W. 663, 126 Am. St. 786.

5. Requisites of the Papers.

The requisition and accompanying papers from the governor of the demanding State must meet all the requirements of the Constitution and laws of the United States on interstate rendition. *Ex parte* Smith, (1842), 3 McLean, (U. S.) 121; *Ex parte* McKean, (1878), 3 Hughes, (U. S.) 23; Malcolmson v. Gibbons, (1885), 56 Mich. 459; Ross v. Crofutt, (1911), 84 Conn. 370, 80 Atl. 90.

6. Charge of Crime.

Specifically, the indictment or affidavit charging the crime, must *substantially* charge the alleged fugitive with having committed such crime in the demanding

State. *In re* Greenough, (1858), 31 Vt. 279; *People ex rel.* Lawrence v. Brady, (1874), 56 N. Y. 182; *Ex parte* Powell, (1884), 20 Fla. 806; *Ex parte* Rowland, (1895), 35 Tex. Crim. 108; *Armstrong v. Van de Venter*, (1899), 21 Wash. 682, 59 Pac. 510; *In re* Waterman, (1907), 29 Nev. 288, 89 Pac. 291, 13 Ann. Cas. 926; *Ex parte* Lewis, (1911), 34 Nev. 29, 115 Pac. 729; *Ex parte* Owen, (1913), 10 Okl. Crim. 284, 136 Pac. 137; *Barriere v. State*, (1904), 142 Ala. 72, 39 So. 55; *People ex rel.* Cornett v. Warden, (1908), 60 Misc. 525, 112 N. Y. S. 492; *In re* Mutchler, (1909), 8 Ohio N. P. (N. S.) 345; *In re* Kuhns, (1914), 36 Nev. 487, 137 Pac. 83.

7. Information and Belief.

The affidavit as a charge of crime must be made by a person having knowledge of the commission of the crime and not upon information and belief; *Ex parte* Dimmig, (1887), 74 Cal. 164, 15 Pac. 619; *State v. Gleason*, (1884), 32 Kan. 345, 5 Am. Crim. 172; *Ex parte* Hart, (1894), 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801; *Lippman v. People*, (1898), 175 Ill. 110, 51 N. E. 872, 11 Am. Crim. 356; *Ex parte* Cheatham, (1906), 50 Tex. Crim. 51, 95 S. W. 1077; *People ex rel.* Cornett v. City Prison etc., (1908), 60 Misc. 525, 112 N. Y. S. 492; *Mark v. Browning*, (1911), ——— Utah ———, 115 Pac. 275; *Ex parte* Lewis, (1914), ——— Tex. Crim. ———, 170 S. W. 1098; *Ex parte* Brown, (1915), ——— Tex. Crim. ———, 178 S. W. 366; *Ex parte* Goodman, (1916), ——— Tex. Crim. ———, 182 S. W. 1120.

8. The Authentication.

The authentication by the governor of the demanding State of the copy of the indictment or affidavit and accompanying papers must be regular and legal. *Kingsbury's Case*, (1871), 106 Mass. 223; *Ex parte* Sheldon, (1878), 34 Ohio St. 319; *Hackney v. Welsh*, (1886), 107 Ind. 253, 57 Am. Rep. 101, 36 L. R. A. 488; *Ex parte* Hampton, (1895), 1 Ohio N. P. 181; *In re* Baker, (1899),

21 Wash. 259; *Kemper v. Metzger*, (1907), 169 Ind. 112, 81 N. E. 663; *State v. Curtis*, (1910), 111 Minn. 240.

9. Jurisdictional Question.

The accused must be a fugitive from the justice of the demanding State, and this fact must appear from the requisition and accompanying papers, before the governor of the surrendering State can legally issue, or cause to be issued, his warrant of rendition. *Ex parte Smith*, (1842), *supra*; *In re Jackson*, (1878), 2 Flippin, (U. S.) 183; *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1149, 29 L. ed. 250; *In re Strauss*, (1903), 126 Fed. 327; *Appleyard v. Com.*, (1906), 203 U. S. 222, 27 Sup. Ct. 122, 51 L. ed. 161, 7 Ann. Cas. 1073; *Singleton v. State*, (1906), 144 Ala. 104, 42 So. 23; *Ex parte Overfield*, (1915), — Nev. —, 152 Pac. 568.

10. Physical Presence Necessary.

The papers accompanying the requisition from the demanding State must show that the alleged fugitive was personally present in the demanding State at the time when the crime is charged to have been committed. *In re Mitchell*, (1885), 4 N. Y. Crim. 596; *In re White*, (1893), 55 Fed. 54; *Hayes v. Palmer*, (1903), 21 App. Cas. (D. C.) 450; *Farrell v. Hawley*, (1905), 78 Conn. 150, 61 Atl. 502, 112 Am. St. 98; *O'Malley v. Quigg*, (1909), 172 Ind. 350, 88 N. E. 611; *Ex parte Hoffstot*, (1910), 180 Fed. 240, *affirmed* 218 U. S. 665; *People ex rel. Meeker v. Baker*, (1911), 127 N. Y. S. 382, 142 App. Div. 598; *Ex parte Graham*, (1914), 216 Fed. 813; *Zulch v. Roach*, (1915), 23 Wyo. 335, 151 Pac. 1101; *Reed v. United States*, (1915), 224 Fed. 378.

11. "Complaint."

When the requisition is based on a so-called "complaint," as the charge of crime, such complaint must be verified and bear all of the requisites of an affidavit. *State v. Richardson*, (1885), 34 Minn. 115, 24 N. W. 354.

12. Information.

Where the requisition is based on an "information" as the charge of crime, such information must possess all the requisites of an affidavit. *Morrison v. Dwyer*, (1909), 143 Iowa, 502, 121 N. W. 1064; *State v. Gleason*, (1884), *supra*; *Commonwealth v. Cooke*, (1913), 55 Pa. Supr. Ct. 435.

13. Information Instead of Indictment.

The acceptance of an information, (not sworn to) as the equivalent of an indictment, as a charge of crime in interstate rendition cases, in some States is not regarded with favor. *Ex parte Cheatham*, (1906), *supra*; *Ex parte Hart*, (1894), *supra*; *Bergman v. State*, (1910), 60 Tex. Crim. 8, 130 S. W. 174; *In re Hooper*, (1881), 52 Wis. 699, 58 N. W. 741 (*Contra.*); *People ex rel. v. Stockwell*, (1904), 135 Mich. 341, 97 N. W. 768 (*Contra.*).

14. The Governor Must Personally Sign Warrant.

The warrant of rendition must be actually signed by the governor of the surrendering State, or by the acting governor thereof. *In re Tod*, (1900), 12 S. D. 386, 81 N. W. 637, 12 Am. Crim. 303.

15. "Great Seal" of State.

The warrant of rendition issued by the executive authority of the surrendering State must bear the impress of the "great seal" of the State if the State law so requires. *Vallad v. State*, (1828), 2 Mo. 26.

16. When Accused not a Fugitive.

When the accused fugitive leaves the demanding State at the special instance and request of the prosecuting witness, in a subsequent criminal proceeding, he is not regarded as a fugitive. *In re Tod*, (1900), *supra*; *Leonard v. Zweifel*, (1915), 171 Iowa 522, 151 N. W. 1054 (*Contra.*).

17. Mob Violence.

Upon positive proof to the fact that the alleged fugitive, if surrendered and returned to the demanding State, will not receive a fair and impartial trial, free from mob violence, rendition in such case has been denied. *Ex parte* Hampton, (1895), 1 Ohio N. P. 181; *Marbles v. Creecy*, (1909), 215 U. S. 63, 30 Sup. Ct. 32, 54 L. ed 92.

18. Failure to Annex Charge of Crime.

Where the requisition contains a mere recital that, a duly authenticated copy of an indictment or affidavit is annexed, but there is no copy of indictment or affidavit annexed, such recital by the governor of the demanding State in his requisition is of no effect and the surrender of the fugitive must be denied. *Ex parte* Hart, (1894), *supra*; *Ex parte* Pfitzer, (1867), 28 Ind. 450; *Ex parte* Devine, (1897), 74 Miss. 714, 22 So. 3.

19. Accused and Charged with Crime a Distinction.

The person in custody may be *accused* of having committed a crime or crimes in the demanding State—this is wholly insufficient—he must be *charged* in the courts of that State with the commission of crime. *In re* Heyward, (1848), 1 Sandf. (N. Y. S.) 701; *In re* Rutter, (1869), 7 Abb. Pr. (N. S.) 68; *State v. Hufford*, (1869), 23 Iowa, 391; *Ex parte* White, (1875), 49 Cal. 434; *Ex parte* Lorraine, (1881), 16 Nev. 63.

§184. **Final Appeal to U. S. Supreme Court.**—In a Federal court a person who may be adjudged, on a *habeas corpus* proceeding, to be a fugitive from justice and is ordered remanded to the authorities of the demanding State for deportation, to the State where the alleged crime was committed, may, by appeal to the Supreme Court of the United States, have his case reviewed by the court of last resort, provided, the court or judge rendering the final decision or a justice of the Supreme Court of the United States shall be of opinion

that there exists probable cause for such appeal. This is in accordance with the act of Congress of March 10, 1908, chap. 76, 35 Stat. L. 40.

And after the supreme court of a State shall have adjudicated the fact that a person is a fugitive from the justice of another State, on a *habeas corpus* hearing, and has remanded and surrendered such person for removal to the demanding State, the accused may sue out a writ of error in the Supreme Court of the United States directed to such State and have his caption and detention finally reviewed by the court of last resort. In both instances mentioned should the relator be discharged the respondent may also sue out writ of error in the Supreme Court of the United States.

§ 185. **Appeal in State Courts.**—In the various States of the Union the right of appeal or writ of error, so far as *habeas corpus* is concerned, is not, by any means, uniform or harmonious. In some States the alleged fugitive may appeal to the State supreme court, in the case of an adverse judgment, in a *habeas corpus* proceeding, while in other States the judgment of the lower court is final and conclusive.

1. States Holding Writ Reviewable:

Alabama, by supreme court, *Barriere v. State*, (1904), 142 Ala. 72, 39 So. 55.

Arizona, by statute, see Rev. Stat., Penal Code, 1913.

Arkansas, by supreme court, *Ex parte Good*, (1858), 19 Ark. 410.

Colorado, only jurisdictional questions. See *In re Mahany*, (1902), 29 Colo. 442, 68 Pac. 235.

Connecticut, by supreme court, *McReady v. Nick*, (1866), 33 Conn. 321.

Florida, by supreme court, *Ex parte Edwards*, (1866), 11 Fla. 174; *Ex parte Powell*, (1884), 20 Fla. 806.

Georgia, by supreme court, *Livingston v. Livingston*, (1858), 24 Ga. 379.

Indiana, by supreme court, *Speer v. Davis*, (1871), 38 Ind. 271; *Ex parte Richards*, (1885), 102 Ind. 260.

Iowa, by statute, *Dunkin v. Seifert*, (1904), 123 Iowa, 64, 98 N. W. 558.

Kansas, by supreme court, *In re Klyne*, (1893), 52 Kan. 441, 35 Pac. 23.

Kentucky, by statute, *In re Gill*, (1891), 92 Ky. 118, 17 S. W. 166.

Minnesota, by statute, *State v. Buckhan*, (1882), 29 Minn. 462.

Mississippi, by statute, *Steele v. Shirley*, (1847), 13 Smed. & M. 106; *Covington v. Arrington*, (1847), 32 Miss. 144; *Ex parte Phillips*, (1879), 57 Miss. 357.

Nebraska, by supreme court, *In re VanSciever*, (1894), 42 Neb. 772; *In re Greaser*, (1904), 72 Neb. 612, 101 N. W. 235.

New Jersey, by statute, See Rev. Stat. 1877, p. 475.

New York, by statute, *Yates v. People*, (1810), 6 Johns 337; *People ex rel. Tweed v. Lipscomb*, (1875), 60 N. Y. 559; *People ex rel. Breslin v. Lawrence*, (1887), 107 N. Y. 607.

North Carolina, by supreme court, *Walton v. Gatlin*, (1864), 1 Winst. 318.

Ohio, by statute, *Wilcox v. Nolze*, (1878), 34 Ohio St. 520; *Henderson v. Jones*, (1895), 52 Ohio St. 530.

Oklahoma, by statute, *In re McMaster*, (1900), 9 Okl. 436, 60 Pac. 280.

Oregon, by supreme court, *Ex parte Howe*, (1894), 26 Oregon, 181, 37 Pac. 536.

South Carolina, by statute, *Ex parte Massee*, (1913), 95 S. C. 316, 79 S. E. 97.

South Dakota, by supreme court, *In re Hammil*, (1896), 9 S. D. 390, 69 N. W. 577.

Tennessee, by stat. civil cases, See *Vanvabry v. Stanton*, (1890), 88 Tenn. 334, 12 S. W. 786.

Texas, by stat. for relator, *Ex parte Ainsworth*, (1865), 27 Texas, 731.

Vermont, by supreme court, *In re Cooper*, (1859), 32 Vt. 253.

Virginia, by statute, see Code of Va. 1904, secs. 3087, 3454, 3469.

Washington, by supreme court, *In re Garfinkle*, (1905), 37 Wash. 650, 80 Pac. 88.

West Virginia, by supreme court, *Fleming v. Commrs.*, (1888), 31 W. Va. 608, 8 S. E. 267.

Wisconsin, by statute, Laws 1889, chap. 239, S. & B. Ann. Stat. sec. 3437a. See *Ex parte Brunell*, (1891), 80 Wis. 563.

2. States Holding Writ not Reviewable:

California, by supreme court, *In re Perkins*, (1852), 2 Cal. 424; *Ex parte Ring*, (1865), 28 Cal. 247; *Ex parte White*, (1906), 2 Cal. App. 726.

Delaware, simply not reviewable.

Idaho, by supreme court, *In re Snyder*, (1905), 10 Idaho, 682, 79 Pac. 819.

Illinois, by supreme court, *Hammond v. People*, (1863), 32 Ill. 446; *Ex parte Thompson*, (1879), 93 Ill. 89.

Louisiana, by supreme court, *Ex parte Lacrouts*, (1914), 134 La. 900, 64 So. 824.

Maine, by supreme court, *Knowlton v. Baker*, (1881), 72 Maine, 202.

Maryland, by supreme court, *City of Annapolis v. Howard*, (1894), 80 Md. 244, 30 Atl. 910.

Massachusetts, by supreme court, *Wyeth v. Richardson*, (1857), 76 Mass. 240; *In re King*, (1894), 169 Mass. 46, 36 N. E. 685; *Ex parte Chambers*, (1915), 221 Mass. 178, 108 N. E. 1070.

Michigan, by supreme court, *Faust v. Judge*, (1874), 30 Mich. 266.

Missouri, by supreme court, *Howe v. State*, (1846), 9 Mo. 682.

Montana, by supreme court, *State ex rel. Jackson v. Kennie*, (1900), 24 Mont. 45, 60 Pac. 589.

New Hampshire, writ of *habeas corpus* issued only by a justice or the supreme court. No appeal or writ of error.

New Mexico, by supreme court, *Ex parte Canavan*, (1912), 17 N. M. 100, 130 Pac. 248.

Nevada, by supreme court, *Ex parte Bergman*, (1884), 18 Nev. 331.

North Dakota, by supreme court, *Carruth v. Taylor*, (1898), 8 N. D. 166, 77 N. W. 617.

Pennsylvania, by supreme court, *Russell v. Commonwealth*, (1829), 1 Penn. & W. 82.

Rhode Island, by supreme court. No appeal but may apply to supreme court for another writ. See *Higgins v. Tax Assessors*, (1905), 27 R. I. 401.

Utah, by supreme court, *In re Clasby*, (1882), 3 Utah, 183.

Wyoming, by supreme court, *Tytler v. Tytler*, (1907), 15 Wyo. 319, 89 Pac. 1.

CHAPTER XXI.

SUPREME COURT OF THE UNITED STATES AND RENDITION.

- § 186. Judicial Ruling Favorable to Demanding State.
- § 187. A Remarkable State of Facts.
- § 188. The Rule as to Jurisdiction of the Supreme Court.
- § 189. What has the Supreme Court Decided in Rendition Cases?
- § 190 (1.) *Kentucky v. Dennison*.
- § 191. (2.) *Robb v. Connolly*.
- § 192. (3.) *Ex parte Reggel*.
- § 193. (4.) *Roberts v. Reilly*.
- § 194. (5.) *Cook v. Hart*.
- § 195. (6.) *Lascelles v. Georgia*.
- § 196. (7.) *Pearce v. Texas*.
- § 197. (8.) *Whitten v. Tomlinson*.
- § 198. (9.) *Hyatt v. People ex rel. Corkran*.
- § 199. (10.) *Munsey v. Clough*.
- § 200. (11.) *Dennison v. Christian*.
- § 201. (12.) *In re Strauss*.
- § 202. (13.) *Pettibone v. Nichols*.
- § 203. (14.) *Haywood v. Nichols*.
- § 204. (15.) *Moyer v. Nichols*.
- § 205. (16.) *Morey v. Whitney*.
- § 206. (17.) *Appleyard v. Massachusetts*.
- § 207. (18.) *McNichols v. Pease*.
- § 208. (19.) *Bassing v. Cady*.
- § 209. (20.) *Pierce v. Creecy*.
- § 210. (21.) *Kopel v. Bingham*.
- § 211. (22.) *Compton v. Alabama*.
- § 212. (23.) *Marbles v. Creecy*.
- § 213. (24.) *Ex parte Hoffstot*.
- § 214. (25.) *Strassheim v. Dailey*.
- § 215. (26.) *Drew v. Thaw*.
- § 215a. (27.) *Innes v. Tobin*.

§ 186. Judicial Ruling Favorable to Demanding States.—One of the most important decisions, relating to interstate rendition by the Supreme Court of the United States, was that of *Kentucky v. Dennison*, (1860), 24 How. 66. While the case itself was not one of rendi-

tion directly, yet it involved the ultimate return to the State of Kentucky, of an alleged fugitive from the justice of that State, and was based upon a petition for *mandamus*, to compel the governor of the State of Ohio, to honor the requisition of the governor of Kentucky. In denying and dismissing the petition of the governor of Kentucky, strictly upon the ground of a lack of jurisdiction, the Supreme Court of the United States, in an elaborate opinion, made clear many points which had previously obstructed the rendition of fleeing criminals from one State to another. This decision was the beginning of a series of judicial rulings by the court of last resort, more favorable to the validity of the rendition papers, and which has since made it almost, if not quite impossible, for the alleged fugitive from justice to *defeat* arrest and deportation, so far as that tribunal is concerned. The policy of that court, in determining this class of cases, has been plainly enunciated and ably sustained on two different occasions, as follows:

In *Appleyard v. Massachusetts*, (1906), 203 U. S. 222, 27 Sup. Ct. 122, 51 L. ed. 161, Mr. Justice Harlan said:

“And while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against laws of a State to find permanent asylum in the territory of another State.”

And in *Marbles v. Creecy*, (1909), 215 U. S. 63, 30 Sup. Ct. 32, 54 L. ed. 92, Mr. Justice Harlan again said:

“Another established and obvious principle is that when the extradition papers are regular on their face every intendment is to be indulged in favor of their validity and the burden is on the prisoner to show that some one of the conditions of extradition prescribed by the statutes, as above indicated, have not been met.”

§ 187. A Remarkable State of Facts.—During the past fifty-five years the Supreme Court has passed upon

twenty-six cases relating to interstate rendition, each case, with one exception, (*Kentucky v. Dennison, supra*), was brought to that court on writ of error or appeal from State and Federal courts. It will be interesting to note the fact, in this connection, that of the twenty-six cases so finally adjudicated, only *one* alleged fugitive from justice secured his *discharge* as a result of the finding of that court. See *Hyatt v. People ex rel. Corkran*, (1903), 188 U. S. 691, 23 Sup. Ct. 456, 47 L. ed. 657, 12 Am. Crim. 311. .

It will be seen that many eminent lawyers, representing these fugitives before the Supreme Court, either have been woefully mistaken in their construction of the law of interstate rendition, or else have been wholly unprepared to meet and combat the court's interpretation of the Constitution and laws on this subject, which interpretation has constantly leaned towards the surrender of the fugitive to the authorities of the demanding States.

§ 188. The Rule as to Jurisdiction of the Supreme Court.—It must be borne in mind that a decision of the Supreme Court of the United States to be effective and binding as the law of the land—absolutely final and conclusive—that court must have had jurisdiction to hear and determine the points in controversy, such jurisdiction is conferred only when the record in the case clearly and unmistakably raise the questions for adjudication by the court. The fact that this is the tribunal of last resort of the Union gives it no extra-jurisdictional power—if the right to hear and determine is apparent from the record, its adjudication would be authoritative, otherwise its decision would be merely *dictum*, with no binding effect whatever. It is to be regretted that many important questions, relating to fugitives from justice, have been passed upon by the Supreme Court, in various opinions when the court itself was without authority to hear and determine, this has given rise to some uncertainty as to just what that court has *determined is the law* on interstate rendition.

§ 189. What Has the Supreme Court Decided in Rendition Cases?—In order to give a correct idea, at a glance, as to what the supreme court has determined in each of these twenty-six cases, pertaining to the arrest and surrender of fugitives from the justice of one State or Territory to another, it has been thought advisable to give each case chronologically, together with a brief statement of facts, showing the points raised for adjudication, then the syllabus disclosing the questions heard and determined and finally the cases and authorities cited in each opinion.

§ 190. (1.) Kentucky v. Denison, (1860), 24 How. 66, 16 L. ed. 717.—This was an original petition by the governor of Kentucky to the Supreme Court of the United States for a writ of mandamus, directed to the governor of Ohio, commanding him to honor the requisition of the governor of Kentucky, for the surrender of a fugitive from justice, charged with crime in the latter State. The writ was denied the Supreme Court holding:

1. That the words "treason, felony, or other crime," in the second clause of the second section of the fourth article of the Constitution of the United States, include every offense forbidden and made punishable by the laws of the State where the offense is committed.

2. That it was the duty of the executive authority in each State or Territory, upon the demand made by another executive, accompanied by an indictment or affidavit, duly authenticated to cause to be arrested and delivered to the agent of such executive the alleged fugitive.

3. That the duty of the governor of the asylum State was merely ministerial and that he had no right under the law to exercise any discretionary power as to the nature or character of the crime charged.

4. That the word "duty," in the act of 1793, means the moral obligation of the State to perform the compact in the Constitution, when Congress had, by that act, regulated the mode in which the duty was to be performed.

5. That neither Congress nor the Judiciary or any other department of the General Government, can coerce or compel the governor of a State or Territory to surrender an alleged fugitive. It is a moral obligation which he may perform or not as he may see fit.

§ 191. (2.) **Robb v. Connolly, (1884), 111 U. S. 624, 4 Sup. Ct. 544, 28 L. ed. 542.**—This case strictly speaking was not a rendition case but the supreme court of California, whose judgment is affirmed, had held, that “the superior court of San Francisco has power to compel the production of the body of a prisoner before it, and has jurisdiction to inquire into the cause of detention,” and that “if the party having the prisoner in charge refuse to produce him in obedience to the writ of *habeas corpus*, he is guilty of contempt of court.” One Bayley had been arrested in San Francisco as a fugitive from the justice of the State of Oregon, and Robb, as the agent of the latter State, had received Bayley as such fugitive from the authorities of California, Bayley sued out a writ of *habeas corpus* in the superior court and the same was served upon Robb, who in making return to the writ claimed that he was holding Bayley by virtue of the authority of the laws of the United States, and for that reason he refused to produce the body of his prisoner before the superior court of San Francisco. That court committed Robb, the agent of Oregon and the custodian of Bayley, for contempt. Robb by writ of error carried the case to the supreme court of California, which affirmed the judgment of the lower court, and then by writ of error the case went to the Supreme Court of the United States, where the judgment of the supreme court of California was affirmed, the Supreme Court holding that,

1. An agent, appointed by the State in which a fugitive from justice stands charged with crime, to receive such fugitive from the State by which he is surrendered, is not an officer of the United States within the meaning of former adjudications of this court.

2. Congress has not undertaken to invest the judicial tribunals of the United States with exclusive jurisdiction of issuing writs of *habeas corpus* in proceedings for the arrests of fugitives from justice, and their delivery to the authorities of the State in which they stand charged with crime.

3. Subject to the exclusive and paramount authority of the National government by its own judicial tribunals to determine whether persons held in custody by authority of the courts of the United States, or by commissioners of such courts, or by officers of the general government acting under its laws, or so held in conformity with law, the States have the right, by their own courts, or by the judges thereof, to inquire into the grounds upon which any person, within their respective territorial limits, is restrained of his liberty, and to discharge him, if it be ascertained that such restraint is illegal, and this notwithstanding such illegality may arise from a violation of the Constitution and laws of the United States.

§ 192. (3.) *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. ed. 250.—This case was an appeal to the Supreme Court of the United States from the judgment upon *habeas corpus*, of the Third Judicial District Court of Utah, then a Territory, remanding Reggel, the appellant, to the custody of the marshal of the United States, by whom he had been arrested under a warrant by the governor of Utah, issued upon the requisition of the governor of the State of Pennsylvania, which requisition demanded Reggel's arrest and delivery as a fugitive from justice. In affirming the judgment of the Territorial court and remanding Reggel for rendition the court held:

1. The statute requiring the surrender of a fugitive from justice, found in one of the Territories, to the State in which he stands charged with treason, felony, or other crime, embraces every offense known to the laws of the demanding State, including misdemeanors.

2. Each State has the right to prescribe the

forms of pleadings and practice, in both civil and criminal cases subject only to those provisions of the Federal Constitution designed for the protection of life, liberty and property in all of the States of the Union; consequently, in a case involving the surrender, under the act of Congress, of a fugitive from justice, it may not be objected that the indictment is not framed according to the technical rules of criminal pleading, if it conforms substantially to the laws of the United States.

3. Upon the executive of the State or Territory in which the accused is found rests the responsibility of determining whether he is a fugitive from the justice of the demanding State. But the act of Congress does not direct his surrender, unless it is made to appear that he is, in fact, a fugitive from justice.

4. If the determination of that fact, upon proof before the executive of the State, where the alleged fugitive is found, is subject to judicial review upon *habeas corpus*, the accused being in custody under his warrant, which recites the requisition of the demanding State, accompanied by an authentic indictment, charging him substantially as required by its laws with a specific crime committed within its jurisdiction—should not be discharged because, in the judgment of the court, the proof showing that he was a fugitive from justice may not be as full as might properly have been required.

Mr. Justice Harlan delivered the opinion of the court and cited sections 5278 and 5279 of the Revised Statutes of the United States and *Kentucky v. Dennison*, (1860), 24 How. 66.

§ 193. (4.) *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544.—This was an appeal by Wm. S. Roberts, fugitive, from the judgment of the Circuit Court of the United States, for the Southern District of Georgia. Roberts was arrested in Augusta, in the State of Georgia, upon a warrant issued by the governor of that State, upon the requisition of the governor of the State of New York, charging Roberts with being a fugi-

tive from justice and he had sued out a writ of *habeas corpus* in the court mentioned, alleging that he was wrongfully deprived of his liberty and on a hearing he was remanded and ordered to be surrendered to the agent of the State of New York. *In re Roberts*, (1885), 24 Fed. 132. From which order he prosecuted an appeal to the Supreme Court of the United States and in affirming the judgment of the lower court it was held by the court of last resort:

1. On an application of an alleged fugitive from justice (detained under authority of the executive of the State where he is found in order to be surrendered to the executive of the State in which the crime is alleged to have been committed), to be discharged on a writ of *habeas corpus*, it is a question of law, whether he is substantially charged with the commission of a crime against the laws of the latter State; but the question whether he is a fugitive from justice is one of fact, the decision of which by the governor of the State in which he is found is sufficient to justify the removal—at least until overcome by contrary proof.

2. The question whether a corporation is capable in law of ownership of property, the subject of a larceny charged, is not a question which can be raised in proceedings in *habeas corpus* for the discharge of an alleged fugitive from justice held for surrender to the executive of the State in which the crime is alleged to have been committed.

3. If the governor of the State from which the delivery of a fugitive from justice is demanded does not require a certified copy of the law of the State against which the crime is charged to have been committed, the prisoner cannot take advantage of the omission in proceedings in *habeas corpus* for his discharge.

4. It is discretionary with the State upon which the demand is made for surrender of a fugitive from justice to surrender him, even if the allegations charge acts done by him in the State surrendering, which amount to a crime by its laws.

5. A person who, having committed, within a

State, an act which by its laws constitutes a crime, is, when sought for to be subjected to criminal process to answer therefor, found without that State and within the territory of another State or Territory, is a fugitive from justice within the meaning of that term as used in the Constitution of the United States.

Mr. Justice Mathews presented the opinion of the court, citing *Kentucky v. Dennison*, (1860), 24 How. 66; *Robb v. Connolly*, (1884), 111 U. S. 624, 4 Sup. Ct. 544, 28 L. ed. 542; *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. ed. 250.

§ 194. (5.) *Cook v. Hart*, (1892), 146 U. S. 183, 13 Sup. Ct. 40, 36 L. ed. 934.—This was an appeal from an order of the Circuit Court of the United States, for the Eastern District of Wisconsin, dismissing a writ of *habeas corpus* and remanding the relator, Charles E. Cook, to the custody of the Wisconsin authorities for trial in its courts. Cook had previously been arrested in the State of Illinois by virtue of a governor's warrant which was issued upon a requisition of the governor of Wisconsin, charging Cook with the commission of crime against the laws of that State and with being a fugitive from its justice. When arrested in Illinois he sued out a writ of *habeas corpus*, claiming that he was not a fugitive from Wisconsin and upon a hearing in the former State, his petition was dismissed and he was delivered to the agent of Wisconsin and at once carried to the demanding State. Cook acquiesced in the disposition of his case in the courts of Illinois, making no effort whatever to have the supreme court of that State review the judgment of the lower court. Upon his arrival in Wisconsin and just as his trial had begun in that State, he sued out another writ of *habeas corpus* in the circuit court of the United States, alleging that he was unlawfully deprived of his liberty, in that he was not a fugitive from Wisconsin when arrested in Illinois and that therefore he was illegally deported from that State. The Federal court in Wisconsin decided against him and he

prayed an appeal to the Supreme Court of the United States which affirmed the judgment of the lower court, and re-affirmed the doctrine enunciated in *Ker v. Illinois*, (1886), 119 U. S. 436, and *Mahon v. Justice*, (1888), 127 U. S. 700, as to the following points:

1. (a) That the supreme court will not interfere to relieve persons who have been arrested and taken by violence from the territory of one State to that of another, where they are held under process legally issued from the courts of the latter State. (b) That the question of the applicability of this doctrine to a particular case is as much within the province of a State court, as a question of common law or of the law of nations, as it is of the courts of the United States.

2. The doctrine enunciated in *Ex parte Royall*, (1885), 117 U. S. 241, and *Ex parte Fonda*, (1885), 117 U. S. 516, adhered to as to the point that where a person is in custody under process from a State court of original jurisdiction for an alleged offense against the laws of that State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, a circuit court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted, which discretion will be subordinated to any special circumstances requiring immediate action.

3. The exercise of the power to issue writs of *habeas corpus* to a State court proceeding in disregard of rights secured by the Constitution and laws of the United States, before the question has been raised or determined in the State court, is one that ought not to be encouraged.

4. In this case the court affirms the judgment of the circuit court refusing to discharge on writ of *habeas corpus* a prisoner, who had been surrendered by the governor of Illinois on the requisition of the governor of Wisconsin, as a fugitive from justice, but who claimed not to have been such a fugitive, it appearing that the case was still pending in the courts of Wisconsin, and had not been tried upon its merits and this court further held,

(a) That no defect of jurisdiction was waived by submitting to a trial on the merits.

(b) That comity demanded that the State courts should be appealed to in the first instance.

(c) That a denial of his rights there would not impair his remedy in the Federal courts.

(d) That no special circumstances existed here such as were referred to in *Ex parte Royall*, *supra*.

The opinion of the court was delivered by Mr. Justice Brown and the following cases were cited: *Ker v. Illinois*, *supra*; *Ex parte Fonda*, *supra*; *Mahon v. Justice*, *supra*; *Ex parte Reggel*, (1885), 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. ed. 250; *Robb v. Connolly*, (1884), 111 U. S. 624, 4 Sup. Ct. 544, 28 L. ed. 542; *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544.

§ 195. (6.) *Lascelles v. Georgia*, (1893), 148 U. S. 543, 13 Sup. Ct. 687, 37 L. ed. 549.—In July 1891, two indictments were found by the grand jury of the county of Floyd, State of Georgia, against the plaintiff in error under the name of Walter S. Beresford, which respectively charged him with the offense “of being a common cheat and swindler,” and with the crime of “larceny after trust delegated,” both being criminal acts by the laws of Georgia, and alleged to have been committed in the county of Floyd. When these indictments were found Beresford was residing in the State of New York. In September 1891, the governor of the State of Georgia made a requisition on the governor of the State of New York for the arrest and surrender of Beresford, the governor of New York issued his warrant in compliance with the demand and Beresford was arrested and surrendered to the agent of the State of Georgia and was carried to that State. Upon his arrival he was delivered to the sheriff of Floyd county, by whom he was detained in the county jail. While so held in jail and before trial upon either of the indictments on which his rendition was based, the grand jury of the county, on the 6th day of October, 1891, found a new indictment against him charging him with forgery, naming him as Sidney Lascelles,

which was his true and proper name. Before arraignment he moved the court to quash said indictment, "on the ground that he was being tried for a separate and different offense from that for which he was extradited from the State of New York." This motion was overruled in the superior court of Floyd county, the court having jurisdiction to try him for the crime charged, he was put on trial on the indictment for forgery and was convicted. His motion for new trial was overruled and he was sentenced by the court—the case was appealed by Lascelles to the State supreme court, before which he again asserted his exemption from trial upon the indictment, upon the grounds stated in his motion to quash in the lower court but the supreme court of Georgia sustained the action of the superior court of Floyd county in all respects and affirmed its judgment. Upon writ of error to the supreme court of Georgia this case was brought to the Supreme Court of the United States where Mr. Justice Jackson in an able and learned opinion, fully sustained the finding of the Georgia supreme court, holding that,

A fugitive from justice who has been surrendered by one State of the Union to another State, upon requisition charging him with the commission of a specific crime, has, under the Constitution and laws of the United States, no right, privilege or immunity to be exempt from indictment and trial, in the State to which he is returned, for any other or different offense from that designated in the requisition, without first having an opportunity to return to the State from which he was extradited.

Cases cited with approval: *Matter of Noyes*, (1878), 17 Alb. L. J. 407; *Ham v. State*, (1878), 4 Tex. App. 645; *State v. Stewart*, (1884), 60 Wis. 587; *People v. Cross*, (1892), 135 N. Y. Supp. 536; *Commonwealth v. Wright*, (1893), 158 Mass. 149; *In re Miles*, (1875), 52 Vt. 609.

§ 196. (7.) *Pearce v. Texas*, (1894), 155 U. S. 311, 15 Sup. Ct. 116, 39 L. ed. 164.—George A. Pearce, plaintiff in error and alleged fugitive was arrested in the

State of Texas on a rendition warrant issued by the governor of that State, upon the requisition of the governor of the State of Alabama, to answer two indictments against him, each charging embezzlement and grand larceny, and while in custody in Texas, he sued out a writ of *habeas corpus* before one of the judges of the district court, and after a hearing the petition was dismissed and he was remanded. Pearce thereupon prayed an appeal to the court of criminal appeals of the State of Texas, the court of last resort in criminal matters, where the judgment below was affirmed and by writ of error to the court of criminal appeals of Texas this case is brought to the United States Supreme Court for final adjudication. Mr. Chief Justice Fuller delivered the opinion of the court, which in all respects sustained the ruling of the Texas court of criminal appeals, holding that,

1. Pearce being arrested in Texas on a requisition from the governor of Alabama for his rendition for trial in Alabama on an indictment for embezzlement and larceny, sought his discharge through a writ of *habeas corpus* on the ground of the invalidity of the indictment under the laws of Alabama. The court of criminal appeals of Texas decided that, as it appeared that Pearce was charged by indictment in Alabama with the commission of an offense there, and that all the other prerequisites for his rendition had been complied with, he should be deported to Alabama, leaving to the courts of that State to decide whether the indictment was sufficient, and whether the statute of that State was in violation of the Constitution of the United States. *Held*, that this decision did not deny to Pearce any right secured to him by the Constitution and laws of the United States, and did not erroneously dispose of a Federal question.

2. That indictments dispensing with the allegations of time and venue in conformity with the Code of Alabama has been sustained by judicial decision of the court of last resort in that State, *Noles v. State*, (1858), 24 Ala. 672; *Thompson v. State*, (1859), 25 Ala. 41.

§ 197. (8.) *Whitten v. Tomlinson*, (1895), 160 U. S. 231, 16 Sup. Ct. 297, 40 L. ed. 406.—Whitten was arrested in the State of Connecticut as a fugitive from the justice of the State of Massachusetts, on the rendition warrant of the executive of the former State, which warrant was based upon the requisition of the executive of the State of Massachusetts, charging Whitten by indictment with the commission of an offense against the laws of that State. While in custody of the Connecticut authorities, Whitten sued out a writ of *habeas corpus* in the circuit court of the United States, for the District of Connecticut, contending in his petition that he was unlawfully restrained of his liberty, in that he was not lawfully charged with crime in the State of Massachusetts, and that his deportation to the demanding State would be a violation of his rights under the Constitution and laws of the United States. Upon a hearing in the circuit court of the United States, the petition of the relator, Whitten, was dismissed and a formal order surrendering him to the agent of Massachusetts was entered. (*Ex parte Whitten*, (1895), 67 Fed. 320.) An appeal to the Supreme Court was prayed from the judgment and order of the Circuit Court of the United States and Mr. Justice Gray speaking for the court affirmed the finding of the lower court, and held that,

1. A warrant of rendition of the governor of a State, issued upon the requisition of the governor of another State, accompanied by a copy of an indictment, is *prima facie* evidence, at least, that the accused had been indicted, and was a fugitive from justice; and, when the court in which the indictment was found had jurisdiction of the offense, is sufficient to make it the duty of the courts of the United States to decline interposition by writ of *habeas corpus* and to leave the question of the lawfulness of the detention of the prisoner, in the State in which he was indicted, to be inquired into and determined, in the first instance, by the courts of the State.

2. A prisoner in custody under authority of a State will not be discharged by a court of the United

States by a writ of *habeas corpus*, because an indictment against him lacked the words "true bill," or was found by the grand jury by mistake or misconception, or because a justice of the peace, under a statute of a State, upon application of a surety on a recognizance, and affidavit that the principal intended to abscond does not conform to that statute.

The authorities cited: *Ex parte* Dorr, (1845), 3 How. 103; *In re* Burrus, (1890), 136 U. S. 586; *New York v. Eno*, (1894), 155 U. S. 89; *In re* Neagle, (1890), 135 U. S. 1; *In re* Loney, (1890), 134 U. S. 372; *Ex parte* Royall, (1886), 117 U. S. 241; *Ex parte* Fonda, (1886), 117 U. S. 516; *In re* Duncan, (1891), 139 U. S. 449; *In re* Wood, (1891), 140 U. S. 279; *In re* Jugiro, (1891), 140 U. S. 291; *In re* Wilson, (1891), 140 U. S. 575; *Carper v. Fitzgerald*, (1887), 121 U. S. 87; *Lambert v. Barrett*, (1895), 157 U. S. 697; *Martin v. Hunter*, (1816), 1 Wheat. 304; *Cohens v. Virginia*, (1821), 6 Wheat. 264; *Gordon v. Caldeleugh*, (1806), 3 Cranch 268; *Pepke v. Cronan*, (1894), 155 U. S. 100; *Commonwealth Bank v. Griffith*, (1840), 14 Pet. 56; *Missouri v. Andriano*, (1891), 138 U. S. 496; *In re* Frederich, (1893), 149 U. S. 70; *Ex parte* Bigelow, (1885), 113 U. S. 328; *Bergemann v. Backer*, (1895), 157 U. S. 655; *Belt*, petitioner, (1895), 159 U. S. 95; *Wildenhus's case*, (1887), 120 U. S. 1; *Cook v. Hart*, (1892), 146 U. S. 183; *Robb v. Connolly*, (1884), 111 U. S. 624; *Ex parte* Reggel, (1885), 114 U. S. 642; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Pearce v. Texas*, (1894), 155 U. S. 311.

§ 198. (9.) **Hyatt v. People ex rel. Corkran**, (1903), 188 U. S. 691, 23 Sup. Ct. 456, 47 L. ed. 657, 12 Am. Crim. 311.—Charles E. Corkran was arrested in New York on a warrant issued by the governor of that State, upon a requisition of the governor of the State of Tennessee, charging him with being a fugitive from the justice of that State. A writ of *habeas corpus* was sued out before a justice of the supreme court of New York by Corkran and upon a hearing he was remanded to the custody of the New York authorities, with instructions that he be

delivered to the agent of the State of Tennessee for rendition, from this judgment an appeal was taken to the appellate division of the supreme court of New York, which court refused to grant Corkran's discharge, thereupon another appeal was taken to the court of appeals of New York, the highest judicial tribunal in that State, and after a thorough examination of the record in the case the orders and judgments of the lower courts were reversed and Corkran was ordered discharged, the court of appeals finding that he was not a fugitive from the justice of the State of Tennessee. (*People ex rel. Corkran v. Hyatt*, (1902), 172 N. Y. 176, 64 N. E. 825.) A writ of error, on motion of the respondent, Hyatt, was issued by the Supreme Court of the United States to the court of appeals of New York, for a review of the judgment of that court and Mr. Justice Peckham, speaking for the Supreme Court, affirmed the judgment of the court of appeals and ordered the discharge of Corkran. This is the only discharge of an alleged fugitive from justice by the Supreme Court in the past fifty-five years. Among the questions decided by the court were the following:

1. The provision of the United States Constitution, in relation to interstate rendition, is not self-acting; but was made operative by the act of Congress of February 12, 1793, which is substantially retained by the Revised Statutes, section 5278.

2. A fugitive from justice is one who being present in a jurisdiction where the crime is committed, flees from such jurisdiction. To be constructively present is not sufficient; for one who was not actually present, cannot fly from justice.

3. One who was not present in a State at the time when a crime was committed, but subsequently entered the State on business and then left it, is not a fugitive from justice.

4. A rendition warrant should not issue, unless the documents presented by the governor making the requisition, show that the accused was present in the demanding State at the time of the commis-

sion of the alleged crime, and that he thereafter fled from such State, and sought refuge in the State upon which demand is made; and that he is lawfully charged by indictment found, or by affidavit made before a magistrate.

5. The question as to whether the person so demanded is substantially charged with a crime is a question of law which on the face of the papers is open to inquiry, on a writ of *habeas corpus*.

6. Whether or not the accused is a fugitive from justice is a question of fact, to be passed upon by the governor upon whom the demand is made.

7. The rendition warrant is but *prima facie* authority to arrest and hold the accused. It is competent for the accused, upon the hearing of a writ of *habeas corpus*, to show by conclusive evidence, or admissions made, that the warrant was issued without sufficient proof on the assumption of simply constructive presence, instead of actual presence, within the demanding State at the time of the crime charged.

8. The uncontradicted evidence of the relator, being that he was not present in the demanding State at the time of the alleged crime, which fact was also admitted by a stipulation of counsel, *held*, that he was not a fugitive from justice and that the rendition warrant was improperly issued.

9. In the absence of proof to the contrary, the date of the alleged crime as charged in the indictment, will be accepted as correct.

Cases cited in the opinion of the court: *Roberts v. Reilly*, (1885), 116 U. S. 80; *Kentucky v. Dennison*, (1860), 24 How. 66, 104; *People v. Brady*, (1874), 56 N. Y. 182; *Robb v. Connolly*, (1884), 111 U. S. 624; *Ex parte Reggel*, (1885), 114 U. S. 642; *Cook v. Hart*, (1892), 146 U. S. 183; *In re White*, (1893), 55 Fed. 54, 58; *Wilcox v. Nolze*, (1878), 34 Ohio St. 524; *Jones v. Leonard*, (1878), 50 Iowa 106, 32 Am. Rep. 116; *In re Mohr*, (1883), 73 Ala. 503, 514; *In re Fetter*, (1852), 23 N. J. L. 311, 57 Am. Dec. 382; *Hartman v. Aveline*, (1878), 63 Ind. 345, 30 Am. Rep. 217; *Ex parte Knowles*, (1894), 16 Ky. L. Rep. 263; *Kingsburry's case*, (1870), 106 Mass.

227; *State v. Hall*, (1894), 115 N. C. 811, 28 L. R. A. 289, 20 S. E. 729.

§ 199. (10.) *Munsey v. Clough*, (1904), 196 U. S. 364, 25 Sup. Ct. 282, 49 L. ed. 515.—Martha S. Munsey was arrested in the State of New Hampshire on a governor's warrant of that State, issued upon a requisition of the governor of the State of Massachusetts, charging her by indictment with the commission of a crime in that State and with being a fugitive from its justice. While in custody of the New Hampshire authorities she sued out a writ of *habeas corpus* in the State court to obtain her discharge, upon the ground that she was unlawfully deprived of her liberty and upon a hearing the court refused to discharge her and this judgment of refusal was affirmed by the supreme court of New Hampshire. (*State ex rel. Munsey v. Clough*, (1902), 71 N. H. 594.) By writ of error the case was carried to the Supreme Court of the United States for review, which court affirmed the finding of the supreme court of New Hampshire and ordered the surrender of Martha S. Munsey, plaintiff in error, to the agent of the State of Massachusetts as a fugitive from the justice of that State, holding that,

1. Proceedings in interstate rendition are summary; strict common law evidence is not necessary, and the person demanded has no constitutional right to a hearing. The governor's warrant for removal is sufficient until the presumption of its legality is overthrown by contrary proof in a legal proceeding to review his action.

2. The indictment found in the demanding State will not be presumed to be void on *habeas corpus* proceedings in the State in which the demand is made if it substantially charges an offense for which the person demanded may be returned for trial.

3. Where there is no doubt that the person demanded was not in the demanding State when the crime was committed and the demand is made on the ground of constructive presence only he will be discharged on *habeas corpus*, but he will not be discharged when there is merely contradictory evidence

as to his presence or absence, for *habeas corpus* is not the proper proceeding to try the question of *alibi* or any question as to the guilt or innocence of the accused.

Mr. Justice Peckham in delivering the opinion of the court cited the following cases: *Roberts v. Reilly*, (1885), 116 U. S. 80, 6 Sup. Ct. 291, 29 L. ed. 544; *Ex parte Royall*, (1886), 117 U. S. 241; *Ex parte Reggel*, (1885), 114 U. S. 642; *Pearce v. Texas*, (1894), 155 U. S. 311; *Ex parte Hart*, (1894), 59 Fed. 894.

§ 200. (11.) *Dennison v. Christian*, (1905), 196 U. S. 637, 25 Sup. Ct. 791, 49 L. ed. 350.—In 1904 the relator, Dennison, was, by an indictment of the grand jury of Harrison county, in the State of Iowa, charged with the crime of “receiving and aiding in the concealment of stolen property knowing the same to have been stolen,” committed in 1892—twelve years prior to the demand for his arrest and surrender, and for many years Dennison had been a resident of Omaha, Nebraska. In the face of the apparent abandonment of the prosecution or pressing of the charge the governor of the State of Iowa, at the request of the prosecuting attorney of Harrison county, a requisition was issued on the governor of Nebraska, demanding the arrest and surrender of Dennison, as a fugitive from justice. The governor of Nebraska honored the requisition and issued his warrant for the arrest and deportation of Dennison, and by virtue of this warrant he was arrested by the authorities of Nebraska as a fugitive from the justice of the State of Iowa. Dennison sued out a writ of *habeas corpus* in the district court of Omaha, strenuously contending that he was not a fugitive from the justice of Iowa and that he was not legally charged with crime in that State. Upon a full and complete hearing in the district court of Omaha, Dennison’s petition was dismissed and he was ordered remanded. From this judgment an appeal was taken to the supreme court of Nebraska on his behalf, this tribunal sustained the finding of the lower court in every respect, ordering the surrender of the accused to

the agent of the demanding State. (*Dennison v. Christian*, (1904), 72 Neb. 703.) Thereupon Dennison secured a writ of error from the Supreme Court of the United States to the supreme court of Nebraska and the case was transferred to the court of last resort for final adjudication. In 1905, on motion of the defendant in error, Christian, the writ of error was dismissed and the judgment of the supreme court of Nebraska was affirmed in a memorandum opinion. The points in the decision of the supreme court of Nebraska—affirmed by the Supreme Court of the United States—are to be found in the syllabus of that case as reported, and is as follows:

1. Section 364 of the criminal code of Nebraska does not authorize the extradition of a person charged with crime against the laws of another State without proof that the person so charged is a fugitive from the justice of the demanding State.

2. It is not necessary that the warrant issued by the governor of this State upon the requisition of the governor of another State should contain the express statement that the governor has found that the accused is a fugitive from justice. The fact of the issuing of the warrant, upon demand made upon that ground, is sufficient to justify the presumption that the governor so found, until that presumption is overthrown by proof to the contrary.

3. Upon proceedings in *habeas corpus* to obtain the discharge of one who is held under the governor's warrant in extradition, it is not indispensable that the officer's return to the writ contain affirmative allegations of all the facts upon which the extradition proceedings are based. If the return sets forth the governor's warrant under which the accused is held and the recitals of the warrant, together with the allegations of the application for *habeas corpus* show facts sufficient to justify the detention of the accused, the return is sufficient.

4. When such requisition is made upon the governor of this State he must determine; first, whether the person demanded is substantially charged with a crime against the laws of the State from whose justice it is alleged he has fled by an indictment or affi-

davit properly certified, and, second, is he a fugitive from the justice of the State demanding him? When it is made substantially to appear to the court in *habeas corpus* proceedings, upon what showing the governor acted, it becomes a question of law for the court to determine whether or not the accused has been substantially charged with a crime against the laws of the demanding State.

5. In determining whether the evidence before the court below was sufficient to support the judgment, this court will not regard errors of the trial court in admitting incompetent evidence, if it appear from the whole record that, upon the evidence conceded to be competent, no other conclusion could be reached than the one reached by the trial court.

6. This court is bound by the construction of the extradition laws adopted by the Supreme Court of the United States. In view of the language of that court in *Hyatt v. Corkran*, (1903), 188 U. S. 691, the courts of this State will not review the decision of the governor in extradition proceedings upon a question of fact made before him, which the law makes it his duty to decide and upon which there was evidence *pro* and *con* before the governor.

7. When the relator in *habeas corpus* proceedings gives evidence in his own behalf, the court should not allow him to be cross-examined upon matters not related to his examination in chief, but an error in so doing is without prejudice to the defendant the trial being to the court itself, when no other judgment than the one entered could have been rendered upon the evidence which is conceded to be proper and competent.

Cases cited in the opinion of the court: *Wilcox v. Nolze*, (1878), 34 Ohio St. 518; *Ex parte White*, (1875), 49 Cal. 433; *Ex parte Romanes*, (1876), 1 Utah 23; *Kentucky v. Dennison*, (1860), 24 How. 66; *Ex parte Sheldon*, (1878), 34 Ohio St. 319; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Bruce v. Raynor*, (1903), 124 Fed. 481.

§ 201. (12.) In *re Strauss*, (1905), 197 U. S. 324, 25 Sup. Ct. 535, 49 L. ed. 774.—*Strauss* was charged by affi-

davit before a justice of the peace of Youngstown township, Ohio, with the crime of obtaining four hundred dollars worth of jewelry at Youngstown, Ohio, by false pretenses, contrary to the law of that State. He was arrested as a fugitive from justice in New York city, and brought before a magistrate and held as such fugitive to await the requisition of the governor of Ohio. The requisition in due time was presented to the governor of New York and Strauss was accorded a hearing before that official and was represented by counsel, and after a full and complete hearing the governor of New York decided that Strauss was a fugitive from the justice of Ohio and should be returned to that State to answer for the crime charged. The governor's warrant was accordingly issued and Strauss was placed in custody thereunder. Thereupon a writ of *habeas corpus* was issued, on Strauss' petition, and the legality of his detention was determined by the United States district court, which found that he was a fugitive and was properly charged with crime in the State of Ohio, from this judgment an appeal was taken to the circuit court of appeals of the United States for the district of New York, which court certified the following questions to the Supreme Court of the United States:

First. Whether the delivery up of an alleged fugitive from justice against whom a complaint for the crime of securing property by false pretenses has been sworn to and is pending before a justice of the peace of Ohio having jurisdiction conferred upon him by the laws of that State is authorized in view of the provisions of article IV, section 2, subdivision 2, of the Constitution?

Second. Is section 5278 of the Revised Statutes of the United States, in as far as it authorizes the delivery up of an alleged fugitive from justice upon an affidavit of complaint pending before a justice of the peace in Ohio for the crime of securing property by false pretenses, which said justice of the peace has the jurisdiction conferred by the laws of said State, violative of article IV, section 2, subdivision

2, of the Constitution of the United States? (*In re Strauss*, (1905), 126 Fed. 327.)

The Supreme Court of the United States heard this case upon certificate and affirmed the finding of the lower court, answering the first question in the affirmative and the second in the negative, deciding that,

1. Words in the Constitution of the United States do not ordinarily receive a narrow and contracted meaning, but are presumed to have been used in a broad sense with a view of covering all contingencies.

2. The word "charged" in article IV, section 2, subdivision 2, of the Constitution, was used in its broad significance to cover any proceeding which a State might see fit to adopt for a formal accusation against an alleged criminal.

3. Extradition or rendition, is but one step in securing the presence of the accused in court in which he may be tried and in no manner determines the question of guilt, and while courts will always endeavor to prevent any wrong in the extradition of a person to answer a charge of crime ignorantly or wantonly made, the possibility cannot always be guarded against and the process of extradition must not be so burdened as to make it valueless.

4. The extradition of an alleged fugitive from justice against whom a charge of crime of securing property by false pretenses has been made and is pending before a justice of the peace of Ohio, having jurisdiction conferred upon by the laws of that State to examine and bind over for trial in a superior court, is authorized by article IV, section 2, subdivision 2 of the Constitution of the United States and section 5278 of the Revised Statutes.

Authorities and cases cited in the opinion of the court: Bates' Annotated Ohio Statutes, 4th ed. sec. 7076; Ohio Constitution, art. 1, sec. 10, Bill of Rights; *Virginia v. Paul*, (1893), 148 U. S. 107; *McCulloch v. Maryland*, (1819), 4 Wheat. 316; *Moore on Extradition*, page 335 and sections 5270 to 5278, U. S. Revised Statutes.

§ 202. (13.) *Pettibone v. Nichols*, (1906), 203 U. S. 192, 27 Sup. Ct. 111, 57 L. ed. 148.—This was an appeal from a judgment of the Circuit Court of the United States for the District of Idaho refusing, upon *habeas corpus*, to discharge Pettibone, who alleged that he was held in custody by the sheriff of Canyon county, Idaho, in violation of the Constitution and laws of the United States. On February 12, 1906, a criminal complaint verified by oath of the prosecuting attorney of that county, charging Pettibone with having murdered Frank Steunenbergh at Caldwell, Idaho, on December 30, 1905, was filed in the office of the probate judge. A warrant was duly issued for Pettibone's arrest, based on this complaint, but not being in the State of Idaho he was not apprehended. Thereupon the governor of Idaho, acting upon the request of the prosecuting attorney, issued a requisition directed to the governor of the State of Colorado asking him for the arrest and surrender of Pettibone as a fugitive from the justice of Idaho. The governor of Colorado honored the requisition and issued his warrant for the alleged fugitive and being found in Colorado Pettibone was arrested and in accordance with the governor's warrant was at once delivered to the agent of Idaho and transported to that State.

Shortly after his arrival in Idaho an application was made by him to the supreme court of that State for a writ of *habeas corpus*, claiming that his presence in Idaho was procured by fraud, connivance and conspiracy of the executive officers and other officials of the two States and that his detention was contrary to the Constitution and laws of the United States. At the hearing before the supreme court of Idaho, the officers having Pettibone and the other prisoners in custody moved to strike from the petition and answer of Pettibone all allegations relating to the manner and method of obtaining his presence in Idaho. The supreme court sustained this motion upon the ground that Pettibone's detention at that time was legal in every respect and that the court had nothing whatever to do with the manner of his being brought into

the State, since he was then being lawfully held. *In re Pettibone*, (1906), 12 Idaho 264; *In re Moyer*, (1906), 12 Idaho 250; *In re Haywood*, (1906), 12 Idaho 265.

A subsequent petition for *habeas corpus* on behalf of Pettibone, alleging the same grounds practically as were set forth in his first application, was presented to the circuit court of the United States of Idaho, and upon a hearing the court dismissed the petition and remanded Pettibone to the custody of the State officers for trial on the charge of murder. From the judgment of this court an appeal was taken to the Supreme Court of the United States, and after due consideration Mr. Justice Harlan delivered a very able and exhaustive opinion, holding that,

1. The duty of a Federal court, to interfere, on *habeas corpus*, for the protection of one alleged to be restrained of his liberty in violation of the Constitution and laws of the United States, must often be controlled by the special circumstances of the case, and except in emergency demanding prompt action, the party held in custody by a State, charged with crime, which, it will be assumed, will enforce, as it has been the power to do equally with a Federal court, any right asserted under and secured by the supreme law of the land.

2. Even if the arrest and deportation of one alleged to be a fugitive from justice may have been effected by fraud and connivance arranged between the executive authorities of the demanding State and the surrendering State so as to deprive him of any opportunity to apply before deportation to a court in the surrendering State for his discharge, and even if on such application to any court, State or Federal he would have been discharged, he cannot, so far as the Constitution and laws of the United States are concerned—when actually in the demanding State, in the custody of its authorities for trial, and subject to the jurisdiction thereof—be discharged on *habeas corpus* by the Federal court. It would be improper and inappropriate in the Circuit Court to inquire as to the motives guiding or controlling the

action of the governors of the demanding and surrendering States.

3. No obligation is imposed by the *Constitution and laws of the United States* on the agent of a demanding State to so time the arrest of one alleged to be a fugitive from justice and so conduct his deportation from the surrendering State as to afford him a convenient opportunity, before some judicial tribunal, sitting in the latter State, upon *habeas corpus* or otherwise, to test the question whether he was a fugitive from justice and as such liable, under the act of Congress, to be conveyed to the demanding State for trial there.

§ 203. (14.) *Haywood v. Nichols*, (1906), 203 U. S. 222, 27 Sup. Ct. 111, 57 L. ed. 148.—Haywood was indicted with Pettibone for the murder of Steunenberg and was brought with him to Idaho from Colorado, and by stipulation it was agreed that the final judgment of the Supreme Court in the Pettibone case, *supra*, was to be the same in this case.

§ 204. (15.) *Moyer v. Nichols*, (1906), 203 U. S. 222, 27 Sup. Ct. 111, 57 L. ed. 148.—The same stipulation as in Haywood case, *supra*, was made as to this case.

§ 205. (16.) *Morey v. Whitney*, (1906), 203 U. S. 222, 27 Sup. Ct. 111, 57 L. ed. 148.—The same stipulation as in Haywood case, *supra*, was made as to this case.

§ 206. (17.) *Appleyard v. Massachusetts*, (1906), 203 U. S. 222, 27 Sup. Ct. 122, 51 L. ed. 161.—Appleyard was indicted in the supreme court of New York, county of Erie, for grand larceny, first degree, said to have been committed in that county on May 18, 1904, a warrant was issued for his arrest but he had left New York and could not be found in the State. He was located in the State of Massachusetts. The district attorney of Erie county applied to the governor of New York for a requisition on the governor of Massachusetts for the arrest and delivery of Appleyard as a fugitive from justice. The requisition was accordingly issued and duly honored

by the governor of Massachusetts and Appleyard was arrested in that State by virtue of the governor's warrant. Appleyard by petition applied to the supreme judicial court of Massachusetts for a writ of *habeas corpus*, alleging that he was not a fugitive from justice within the meaning of the law and, therefore, was unlawfully deprived of his liberty by the warrant of arrest issued by the governor. After a hearing before that court, Appleyard's petition was dismissed and he was remanded to the Massachusetts authorities for delivery to the messenger and agent of the demanding State. Before his deportation he sued out another writ of *habeas corpus*, this time the Federal court issued the writ, and a hearing was had as to the legality of his arrest and detention. It was claimed for him in the Circuit Court of the United States for Massachusetts, that he was not a fugitive from justice within the meaning of the Constitution and statutes of the United States relating to the rendition of fugitive criminals from one State to another.

The Federal court, after a full and complete hearing, quashed the writ of *habeas corpus*, dismissed the petition and remanded Appleyard, from this judgment an appeal was taken directly to the Supreme Court of the United States. Mr. Justice Harlan speaking for the court held that:

1. The constitutional provision relating to fugitives from justice is in nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States and its faithful and vigorous enforcement is vital to their harmony and welfare; and while a State should protect its people against illegal action, Federal courts should be equally careful that the provision be not so narrowly interpreted as to enable those who have offended the laws of one State to find a permanent asylum in another.

2. A person charged by indictment, or affidavit before a magistrate, within a State with the commission of a crime covered by its laws and who leaves the State, no matter for what purpose nor under what belief, becomes from the time of such leaving

and within the meaning of the Constitution and laws of the United States, a fugitive from justice; and in the absence of preponderating or conceded evidence of absence from the demanding State when the crime was committed it is the duty of the other State to surrender the fugitive on the production of the indictment or affidavit properly authenticated.

3. Although, regularly, one seeking relief by *habeas corpus* in the State courts should prosecute his appeal to, or writ of error from, the highest State court, before invoking the jurisdiction of the Circuit Court on *habeas corpus*, where the case is one of which the public interests demand a speedy determination, and the ends of justice will be promoted thereby, this court may proceed to final judgment on appeal from the order of the Circuit Court denying the relief.

Cases cited in the opinion of the court: *Kentucky v. Dennison*, (1860), 24 How. 66; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Ex parte Reggel*, (1885), 114 U. S. 642; *Ex parte Brown*, (1886), 28 Fed. 653; *In re White*, (1893), 55 Fed. 54; *In re Bloch*, (1898), 87 Fed. 981; *Kingsburry's case*, (1870), 106 Mass. 223; *State v. Richter*, (1887), 37 Minn. 436; *Voorhees' Case*, (1867), 32 N. J. L. 141; *Ex parte Swearingen*, (1879), 13 S. Car. 74; *Mohr's Case*, (1883), 73 Ala. 503; *Hibler v. State*, (1875), 43 Tex. 197; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Pettibone v. Nichols*, (1906), 203 U. S. 192.

§ 207. (18.) *McNichols v. Pease*, (1907), 207 U. S. 110, 28 Sup. Ct. 58, 52 L. ed. 121.—*McNichols*, the alleged fugitive, was arrested in Chicago, Illinois, by virtue of a governor's warrant of rendition, issued by the executive of the State of Illinois, upon a requisition of the governor of Wisconsin, accompanying this requisition was an authenticated copy of a charge of crime in the form of a "complaint" made before a magistrate at Kenosha, Wisconsin, alleging that *McNichols*, on September 30, 1905, at Kenosha, did unlawfully take, steal and carry away from the person of one *Hanson* against his will a certain sum of money. The so-called affidavit

was not made by the party from whom the money had been stolen, but was made by the chief of police of Kenosha, unquestionably upon information and belief, without disclosing the source of his knowledge of the alleged crime. The only *proof* that accompanied the requisition that McNichols was a fugitive from the justice of Wisconsin was the statement of the prosecuting attorney to that effect. A writ of *habeas corpus* was sued out by McNichols in the circuit court at Chicago, claiming that he had not been legally charged with a crime in the State of Wisconsin and that he was not a fugitive from the justice of that State. This writ was dismissed without prejudice, in order to give the accused an opportunity to sue out an original writ of *habeas corpus* in the supreme court of Illinois. A petition was accordingly presented by McNichols to that court and upon a hearing a writ was refused upon the ground that it satisfactorily appeared that he was legally charged with crime and that he was a fugitive from justice within the meaning of the Constitution and laws of the United States. This case was carried to the court of last resort by writ of error for review—no bill of exceptions being taken in the courts below—the Supreme Court of the United States was somewhat at a loss to determine just what proofs had been heard. Mr. Justice Harlan delivered the opinion of the court holding that,

1. *Habeas corpus* is an appropriate proceeding for determining whether one held under an extradition warrant is a fugitive from justice; and he should be discharged if he shows by competent evidence, overcoming the presumption of a properly issued warrant, that he is not a fugitive from the demanding State.

2. A faithful and vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and welfare of the States; and provisions of the Constitution should not be so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State.

3. A person held in custody as a fugitive from justice under an extradition warrant in proper form which shows upon its face all that is required by law to be shown as a prerequisite to its being issued, should not be discharged unless it clearly and satisfactorily appears that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States.

4. Where the requisition is based on an indictment for a crime committed on a certain day, without specifying any hour, the accused does not overcome the *prima facie* case by proof that he was not at the place of the crime, for a part of that day, the record not disclosing the hour of the crime, and it appearing that the accused might have been at the place named during a part of the day.

5. On a writ of error to review a final judgment in *habeas corpus* proceedings the court must determine by the record whether the State court erred and its decision cannot be controlled or effected by an apparent admission of defendant in error that certain affidavits annexed to the petition were used without objection as evidence.

6. The court takes judicial knowledge of facts known to everyone as to the distance between two neighboring cities and the time necessary to travel from one to the other.

Cases and authorities cited in the opinion: *Robb v. Connolly*, (1884), 111 U. S. 624; *Ex parte Reggel*, (1885), 114 U. S. 642; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Munsey v. Clough*, (1904), 196 U. S. 364; *Pettibone v. Nichols*, (1906), 203 U. S. 192; *Appleyard v. Massachusetts*, (1906), 203 U. S. 222; 1 *Pomeroy's Archibold's Cr. Pr. & Pl.* 363.

§ 208. (19.) *Bassing v. Cady*, (1907), 208 U. S. 386, 28 Sup. Ct. 392, 52 L. ed. 540, 13 Ann. Cas. 905.—The governor of the State of Rhode Island issued a warrant of arrest addressed to the sheriff of Bristol county, in that State, commanding him to arrest Jacob Bassing, who was charged by indictment in the State of New York with

the crime of larceny, first degree, and that he was a fugitive from the justice of that State. The requisition of the governor of the State of New York was accompanied by a duly authenticated copy of an indictment and other papers. Bassing was arrested in Bristol county, Rhode Island, by virtue of said warrant, and at once sued out a writ of *habeas corpus* from the supreme court of Rhode Island, alleging in his petition that he had been "extradited at a prior time, to-wit: March 12, 1907, on a requisition of the governor of the State of New York for the same offense, from the State of Rhode Island." And that he was discharged from custody by the New York officials when brought before the court of that State and that his present detention was in violation of the Constitution and laws of the United States pertaining to interstate rendition.

On hearing in the supreme court of Rhode Island it appeared that Bassing was discharged in New York by the courts of that State on motion of the district attorney on the ground that at that time he had not sufficient proof to convict him. Subsequently however, another indictment was found by the grand jury against Bassing for the same offense and upon this second indictment his arrest and surrender was demanded by the executive of New York. The Rhode Island court held that the second rendition was legal in every respect. A writ of error was secured from the Supreme Court of the United States to the Rhode Island court and this case comes to the highest court for review. Mr. Justice Harlan, in speaking for the court, upheld every contention of the court of Rhode Island, which had held that Bassing was properly charged with crime and that he was a fugitive from the justice of the State of New York and should be delivered to the agent of that State for deportation. In affirming the judgment of the State tribunal the Supreme Court held that,

1. On appeal or writ of error to this court, papers or documents used in the court below cannot in strictness be examined here unless by bill of excep-

tions or other proper mode they are made a part of the record.

2. The mere arraignment and pleading to an indictment does not put the accused in judicial jeopardy, nor does the second surrender of the same person by one State to another amount to putting that person in second jeopardy because the requisition of the demanding State is based on an indictment for the same offense for which the accused had been formerly indicted and surrendered but for which he had never been tried.

3. One charged with crime and who was in the place where, and at the time when, the crime was committed, and who thereafter leaves the State, no matter for what reason, is a fugitive from justice within the meaning of the interstate rendition proceedings of the Constitution, and of section 5278 Revised Statutes, and this none the less if he leaves the State with the knowledge and without the objection of its authorities.

Cases cited in the opinion: Appleyard v. Massachusetts, (1906), 203 U. S. 222; McNichols v. Pease, (1907), 207 U. S. 110.

§ 209. (20.) **Pierce v. Creecy, (1908), 210 U. S. 387, 28 Sup. Ct. 387, 52 L. ed. 1113.**—Henry Clay Pierce was arrested in the city of St. Louis, State of Missouri, on a governor's warrant, issued by the executive authority of that State, upon the requisition of the governor of the State of Texas, charging him by indictment, with the crime of perjury, committed in Texas six years prior to his indictment. Pierce sued out a writ of *habeas corpus* from the Circuit Court of the United States for the eastern district of Missouri, claiming that he was "imprisoned, detained, confined and restrained of his liberty, at the city of St. Louis, by officials of said city, in violation of the laws and Constitution of the United States, in that the indictment by the Texas court does not specifically and legally charge a crime." Upon a hearing the Federal court held that Pierce was properly and legally charged with the crime of perjury and that he was a fugi-

tive from the justice of the State of Texas. (*Ex parte* Pierce, (1907), 155 Fed. 663.) From this judgment an appeal was taken to the Supreme Court of the United States by Pierce. His counsel made strenuous efforts to show to the court that the accused was not in fact a fugitive from Texas within the law and that the indictment failed to charge a crime in compliance with interstate rendition procedure. The opinion of the court was delivered by Mr. Justice Moody, affirming the judgment of the court below, and holding that,

1. Whether or not the indictment on which the demand for petitioner's surrender for interstate extradition is based charges him with crime within the requirements of art. IV, sec. 2, par. 2, of the Federal Constitution, involves the construction of that instrument, and a direct appeal lies to this court from the circuit court under sec. 5 of the Judiciary Act of 1891.

2. While no person may be lawfully extradited from one State to another under art. IV, sec. 2, par. 2, of the Federal Constitution unless he has been charged with crime in the latter State, there is no constitutional requirement that there should be anything more than a charge of crime, and an indictment which clearly describes the crime charged is sufficient even though it may be bad as a pleading.

3. The Federal courts cannot, on *habeas corpus*, inquire into the truth of an allegation presenting mixed questions of law and fact, in the indictment on which the demand for petitioner's interstate extradition is based; and *quaere* whether it may inquire whether such indictment was or was not found in good faith.

4. A Federal court should not, unless plainly required to do so by the Constitution, assume a duty the exercise of which might lead to a miscarriage of justice prejudicial to the interests of a State.

Cases cited: *In re* Strauss, (1905), 197 U. S. 324; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Munsey v. Clough*, (1904), 196 U. S. 364; *Davis' Case*, (1877), 122 Mass. 324; State

v. O'Connor, (1888), 66 Minn. 243; *In re Voorhees*, (1867), 32 N. J. L. 141; *Ex parte Pierce*, (1893), 32 Tex. Crim. 301; *In re VanSceiver*, (1894), 42 Nebr. 772; *State v. Clough*, (1902), 71 N. H. 594; *State v. Goss*, (1896), 66 Minn. 291.

§ 210. (21.) *Kopel v. Bingham*, (1908), 211 U. S. 468, 29 Sup. Ct. 53 L. ed. 286.—Kopel was arrested in the city of New York, by virtue of a governor's warrant, issued by the executive of that State upon a requisition of the governor of Porto Rico charging him with the crime of embezzlement committed in that Territory. Kopel thereupon sued out a writ of *habeas corpus* from the supreme court of the State of New York. Bingham, the police commissioner of New York, who had Kopel in custody, made return to the writ and set up the rendition warrant as his authority for detaining the prisoner. Kopel demurred to the return as insufficient in law, and that the governor's warrant had been issued without authority. The matter coming on to be heard at a special term of the supreme court, the demurrer was overruled and the writ dismissed, and the police commissioner directed to deliver Kopel to the agent of Porto Rico for deportation. From this order Kopel appealed to the appellate division of the supreme court of New York, in which court the judgment of the court below was affirmed. Kopel then appealed to the court of appeals—the court of last resort in New York—and this court too affirmed the order and judgment of the lower court. A writ of error was then secured from the Supreme Court of the United States to the court of appeals of New York, and this case by that process was transferred to the former court for final adjudication. The questions involved were whether the governor of Porto Rico had power and authority to make a requisition upon the governor of the State of New York for the arrest and surrender of Kopel, the alleged fugitive from Porto Rico, who had taken refuge in the State of New York, and whether the governor of the State of New York had power and authority to honor such requi-

sition and to issue his rendition warrant for his arrest and surrender. Mr. Chief Justice Fuller, speaking for the court, decided the points raised as follows:

1. Under sec. 17 of the Act of April 12, 1900, chap. 191, 31 Stat. 77, 81, the governor of Porto Rico has the same power that the governor of any organized Territory has to issue requisitions for the return of fugitive criminals under sec. 5278, Rev. Stat.

2. While subdivision 2, section 2, article IV, Constitution of the United States, refers in terms only to the States, Congress, by the Act of February 12, 1793, known as sec. 5278, Rev. Stat., has provided for the demand and surrender of fugitive criminals of governors of Territories as well as of States, and the power to do so is complete with Territories as well as States.

3. Sec. 5278, will not be construed so as to make territory of the United States an asylum for criminals, and that section is not locally inapplicable to Porto Rico within the meaning of sec. 14 of the Act of April 12, 1900, chap. 191, 31 Rev. Stat.

4. Porto Rico, although not a Territory incorporated into the United States, is a completely organized Territory.

Cases cited in the opinion of the court: *People ex rel. Kopel v. Bingham*, (1907), 189 N. Y. 124; *In re Kopel*, (1906), 148 Fed. 505; *People ex rel. Kopel v. Bingham*, (1907), 117 App. Div. 411; *Ex parte Reggel*, (1885), 114 U. S. 642; *Ex parte Morgan*, (1883), 20 Fed. 278; *In re Lane*, (1890), 135 U. S. 443; *Gonzales v. Williams*, (1904), 192 U. S. 15.

§ 211. (22.) *Compton v. Alabama*, (1909), 214 U. S. 1, 29 Sup. Ct. 605, 53 L. ed. 885.—Compton was arrested in Montgomery, Alabama, on a governor's warrant issued by the governor of that State, upon a requisition of the executive of the State of Georgia, charging Compton by affidavit made before a notary public in Fulton county, Georgia, with being a common cheat against the laws of the latter State. Compton sued out a writ of *habeas corpus* before the judge of the city court of Mont-

gomery, and sought discharge from custody upon the ground that he was illegally restrained of his liberty,

1. That the affidavit of the charge of crime upon which the governor of Georgia based his requisition was not such an affidavit as is required by sec. 5278, Rev. Stat.

2. That said affidavit was not made before a "magistrate" as contemplated by the Federal law on interstate rendition.

When the case was heard before the city court of Montgomery, the respondent in his return to the writ claimed that he was holding Compton by virtue of the governor's warrant. To this return Compton demurred, the demurrer was overruled and the writ of *habeas corpus* was dismissed. From this judgment an appeal was taken by Compton to the supreme court of Alabama, which court affirmed the judgment of the lower court. (*Compton v. Alabama*, (1908), 152 Ala. 68.) Thereupon Compton sued out a writ of error from the Supreme Court of the United States to the supreme court of Alabama and this case is consequently brought before the court of last resort for review. Mr. Justice Harlan, in speaking for the court, enunciated the following principles:

1. Unless the State demanding the return of an alleged fugitive from justice furnishes a copy of an indictment against the accused or an affidavit made before a magistrate as provided by section 5278, Rev. Stat., the executive of the State upon whom the demand is made, may decline to honor the requisition; and, in the absence of such indictment or affidavit, no authority is conferred upon him by sec. 5278, Rev. Stat., to issue his warrant of arrest for a crime committed in another State.

2. An affidavit before a notary public is sufficient under sec. 5278, Rev. Stat., upon which to base a demand for arrest and return of a fugitive from justice if such officer is, as he is regarded in Georgia, a magistrate under the law of that State.

3. Where the papers upon which the requisition for the return of an alleged fugitive from justice is based are regarded as sufficient by the executive

authorities of both States making and honoring the demand, the judiciary should not interfere on *habeas corpus* and discharge the prisoner upon technical grounds unless it is clear that the action plainly contravenes the law.

Authorities and cases cited in the opinion: 2 Code of Ga. sec. 4052, p. 982; 2 Bouvier Law Dic. 643; Anderson's Dic. of Law, 643; Gordon v. Hobart, (1836), 2 Sumner 401.

§ 212. (23.) **Marbles v. Creecy**, (1909), 215 U. S. 63, 30 Sup. Ct. 32, 54 L. ed. 92.—The chief of police of St. Louis, Missouri, arrested the accused, Marbles, in that city by virtue of a warrant of rendition issued by the governor of that State, upon a requisition from the executive of the State of Mississippi, based upon an indictment charging him with an assault with intent to kill and he was also charged with being a fugitive from the justice of that State. Marbles presented a petition to the circuit court of the United States for the eastern district of Missouri, sitting at St. Louis, asking, the issuance of a writ of *habeas corpus*, alleging that he was not a fugitive from the justice of the State of Mississippi and that being a Negro, charged with assaulting a white man in that State, the only purpose of his arrest and deportation was to subject him to mob rule upon his arrival in Mississippi. No attempt was made by the accused, upon the hearing of the writ, to make good by proof the allegations of his petition and the result was that the *habeas corpus* was dismissed and he was ordered to be delivered to the agent of Mississippi for removal to that State. From this judgment an appeal was taken directly to the Supreme Court of the United States, and in affirming the judgment of the court below Mr. Justice Harlan, speaking for the court, held that,

1. The executive of a State upon whom a demand is made for the surrender of a fugitive from justice may act on the papers in the absence of, and without notice to, the accused, and it is for that executive to determine whether he will regard the requisition pa-

pers as sufficient proof that the accused has been charged with crime in, and is a fugitive from justice from, the demanding State, or whether he will demand, as he may if he sees fit so to do, further proof in regard to such facts.

2. A notice in the requisition papers that the demanding State will not be responsible for any expenses attending the arrest and delivery of the fugitive, does not affect the legality of the surrender so far as the rights of the accused under the Constitution and laws of the United States are concerned.

3. The executive of the surrendering State need not be controlled in the discharge of his duty by considerations of race or color, or, in the absence of proof, by suggestions that the alleged fugitive will not be fairly dealt with by the demanding State.

4. On *habeas corpus*, the court can assume that a requisition made by an executive of a State is solely for the purpose of enforcing its laws and that the person surrendered will be legally tried and adequately protected from illegal violence.

Authorities and cases cited in the opinion: Miss. Code, sec. 1043; *McNichols v. Pease*, (1907), 207 U. S. 110; *Ex parte Reggel*, (1885), 114 U. S. 642; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Munsey v. Clough*, (1904), 196 U. S. 637; *Pettibone v. Nichols*, (1906), 203 U. S. 192; *Appleyard v. Massachusetts*, (1906), 203 U. S. 222.

§ 213. (24.) *Ex parte Hoffstot*, (1910), 218 U. S. 665, 31 Sup. Ct. 222, 54 L. ed. 1201.—Hoffstot was a banker and citizen of the city of New York and president of the German National Bank of Pittsburg, Pennsylvania, and frequently visited that city in connection with his business. It was charged that while in that city in the summer of 1908, he and two of his business associates conspired together and did bribe certain members of the city council to vote in favor of the passage of an ordinance designating certain banks as depositories of public funds of that city. A public scandal resulted from an exposure and Hoffstot and others were indicted in Pitts-

burg for bribery. The governor of Pennsylvania by requisition demanded the arrest and surrender of Hoffstot as a fugitive from justice from the governor of the State of New York. Thereupon Hoffstot was arrested in the city of New York by virtue of the governor's warrant, he at once applied to the circuit court of the United States, sitting in the city of New York, for a writ of *habeas corpus*, stoutly contending that he was not personally present in the State of Pennsylvania, when the alleged crime was committed and that he was not, therefore, a fugitive from that State, and that his arrest and proposed deportation to Pennsylvania was in violation of his rights as an American citizen. At the hearing before the Federal court in New York a mass of testimony was taken showing that Hoffstot *was and was not* present in Pennsylvania when the alleged crime was committed. The court in an able and lucid opinion decided that Hoffstot *was* a fugitive from the justice of the demanding State, and thereupon dismissed his writ of *habeas corpus*, and ordered his surrender to the agent of the State of Pennsylvania. (*Ex parte Hoffstot*, (1910), 180 Fed. 240.) From this judgment an appeal was taken directly to the Supreme Court of the United States and affirmed without an opinion. The points raised and decided in the circuit court of the United States were as follows:

1. One may be guilty of conspiracy to bribe municipal officers of a city, without ever having been personally present within the State where such city is located.
2. A man may be indicted in a case in which he cannot be extradited.
3. Petitioner, a resident of New York, indicted in Pennsylvania for conspiracy to bribe members of the Pittsburg city council, could not be extradited in the absence of some proof that he had been physically present in Pennsylvania when the offense was committed, as otherwise he could not be a fugitive from the justice of that State.
4. Where accused has committed a crime in one

State, and afterwards leaves it, the right of extradition exists, without reference to his purpose in going.

5. Where there was specific evidence that petitioner, a resident of New York, participated there in a conspiracy to bribe members of the city council of Pittsburg to select certain banks in Pittsburg, one of which petitioner was president, as city depositories, and there was substantial evidence from which a jury would be justified in drawing an inference that petitioner was in Pittsburg on a day when some act or acts in furtherance of the conspiracy were performed, there was sufficient proof that he was a fugitive from justice to justify his extradition to Pennsylvania.

Cases cited in the opinion: *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Compton v. Alabama*, (1908), 214 U. S. 1; *In re Strauss*, (1903), 126 Fed. 327, 63 C. C. A. 99.

§ 214. (25.) *Strassheim v. Daily*, (1911), 221 U. S. 280, 31 Sup. Ct. 558, 55 L. ed. 735.—Daily was arrested in Chicago by authority of a warrant issued by the governor of Illinois, upon a requisition of the governor of the State of Michigan, based on an indictment against him for obtaining money under false pretenses. The State of Michigan had authorized the installation of new machinery in the Michigan State prison, at Jackson, and had decided to let the same to the lowest bidder. Daily through his firm became the lowest bidder and obtained the contract, and through the connivance and collusion with one Armstrong, superintendent of the State prison, at Jackson, old and worn machinery was installed instead of new as contracted for and by means of the substitution deceived and defrauded the State out of the sum of ten thousand dollars. While in the custody of the sheriff of Cook county, Illinois, under the governor's warrant, Daily sued out a writ of *habeas corpus* before Judge Landis, of the United States district court at Chicago, alleging that he was being unlawfully deprived of his liberty in that he was not legally charged with the commission of a crime in the State of Michigan, and that he

was not a fugitive from the justice of that State because he was not personally present in the State of Michigan on the day or date when said alleged crime was committed. Upon a hearing at Chicago the Federal court upheld both of these contentions of Daily and ordered his discharge. From this judgment an appeal was taken directly to the Supreme Court of the United States, by the sheriff of Cook county, Illinois, and that court reversed the order of discharge by Judge Landis and directed the surrender of Daily to the Michigan authorities to answer the charge of crime against him in the courts of that State. Mr. Justice Holmes, delivered the opinion of the court, deciding the following questions:

1. In a *habeas corpus* proceeding in extradition it is sufficient if the court in the indictment plainly shows that the defendant is charged with a crime.

2. Where a guaranty goes not to newness but to fitness of articles furnished, it is a material fraud to furnish old articles even if they can meet the test of the guaranty; and the fact that the purchaser may rely on the guaranty does not exclude the possibility that the purchase price was obtained by false representations as to the newness of the articles.

3. A State may punish one committing crime done outside its jurisdiction for the purpose of producing detrimental effects within it when it gets the criminal within its power.

4. Commission of the crimes alleged in this indictment—bribery of a public officer and obtaining public money under false pretenses—warrants punishment by the State aggrieved even if the offender did not come into the State until after the fraud was complete.

5. An overt act becomes retrospectively guilty when the contemplated result ensues.

6. One who is never within the State before the commission of a crime producing its results within its jurisdiction is not a fugitive from justice within the rendition provisions of the Constitution, but if he commits some overt and material act within the State and then absents himself, he becomes a

fugitive from justice when the crime is complete, if not before.

7. Although absent from the State when the crime was completed in this case, the party charged became a fugitive from justice by reason of his having committed certain material steps towards the crime within the State, and the demanding State is entitled to his surrender under article IV, section 2, of the Constitution of the United States and the statutes providing for the surrender of fugitives from justice.

Cases cited in the opinion: *Pierce v. Creecy*, (1908), 210 U. S. 387; *Commonwealth v. Smith*, (1865), 11 Allen (Mass.) 243; *Simpson v. State*, (1893), 92 Ga. 41; *In re Cook*, (1892), 49 Fed. 833; *American Banana Co. v. United Fruit Co.*, (1909), 213 U. S. 347; *Commonwealth v. Macloon*, (1869), 101 Mass. 1; *In re Sultan*, (1894), 115 N. C. 57; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Ex parte Hoffstot*, (1910), 180 Fed. 240; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Swift v. United States*, (1905), 196 U. S. 375.

§ 215. (26.) *Drew v. Thaw*, (1914), 235 U. S. 432, 35 Sup. Ct. 137, 59 L. ed. 302.—Harry Kendall Thaw on February 1, 1908, was acquitted by a jury in the County and State of New York of the crime of homicide. The verdict of acquittal was stated by the jury to be on the ground of insanity at the time of the commission of the act. Section 454 of Parker's New York Criminal and Penal Code, Annotated, 1908, on page 139, provided as follows:

"When the defense is insanity of the defendant the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court must, thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the State lunatic asylum, until he becomes sane."

Acting upon the authority of this section of the Criminal Code, Mr. Justice Dowling, of the State supreme

court, who presided at Thaw's trial, without further proceedings or inquiry, made the following order:

"The defendant on his trial in said indictment having been acquitted by the jury on the ground of insanity, and the court being certified of the fact, and the defendant being in custody, and the court deeming his discharge at this time dangerous to public safety, it is

"Ordered that said Harry K. Thaw be detained in safe custody and be sent to the Matteawan State hospital until thence discharged by due course of law, and it is further ordered that the sheriff of the County of New York do forthwith convey said Harry K. Thaw to said hospital."

In compliance with this order Thaw was committed to the Matteawan hospital for detention as an insane person, for an indefinite period of time, and there remained in confinement, except for brief periods when he was elsewhere confined during the pendency of certain proceedings instituted in the courts of New York, to secure his release, until August 17, 1913, when he escaped from that institution. After his escape he was first apprehended in Barford, Province of Quebec, Dominion of Canada, and by the authority of its officials was deported back to the United States. Thaw was again arrested at Colebrook, in the State of New Hampshire, on September 10, 1913, and at once the governor of the State of New York made requisition for his arrest and surrender as a fugitive from the justice of that State. The governor of New Hampshire honored the demand of New York's executive, based on an indictment found against Thaw and others in that State, charging conspiracy. In honoring the requisition the governor of New Hampshire used the following strong language:

"With profound respect therefor, I am unable to view my duty in the premises, as including an investigation of Mr. Thaw's mental condition, or of the conduct of the counsel for the State of New York, or of the probable guilt or innocence of the accused. To do so would hardly be consistent with the mandatory provision of the Constitution that a person

charged in any State with treason, felony or other crime, who shall be found in another State, *shall on demand of the executive authority of the State from which he fled, be delivered up.* It would furthermore, involve an attempted supervision, by myself, over procedure of courts of criminal jurisdiction of another State, in a manner entirely beyond the power of such State to control. Such a course, likewise, involve an inquiry into the motives of the authorities of the demanding State in making the request. Any one of these would manifestly lead to the virtual suspension and eventual nullification of the provisions of the Federal Constitution, by States otherwise supposed to be subject thereto. I have, and I shall continue to assume that the course of the State of New York, in its present demand, does, and in its subsequent conduct with reference to the arraignment and trial of Thaw upon the indictment for which alone the extradition sought is hereby granted, will demonstrate her full appreciation of the dictates of fair play and a righteous and equal administration of justice."

A writ of *habeas corpus* was issued on the petition of Thaw by the judge of the United States district court of New Hampshire, and an inquiry was had as to whether Thaw was legally charged with crime in New York, as to whether he was a fugitive from the justice of New York and as to his sanity. After an exhaustive and prolonged hearing in New Hampshire the Federal judge ordered Thaw's discharge because he was not properly charged with crime in the State of New York and that he was not a fugitive within the meaning of the Constitution and laws of the United States relating to interstate rendition. *Ex parte Thaw*, (1914), 214 Fed. 423. From this judgment an appeal was taken directly to the Supreme Court of the United States and the court of last resort, speaking through Mr. Justice Holmes, reversed the order of the court below and directed the surrender of Thaw to the agent of New York, holding that:

1. A State may enact that a conspiracy to accom-

plish what an individual is free to do shall be a crime.

2. The New York Penal Law, sections 580, 583, making an agreement to commit any act for the perversion of justice or the due administration of the laws a misdemeanor if an overt act is committed, may include the withdrawal by connivance of a person from an insane asylum to which he had duly been committed by order of court as a lunatic.

3. A party to a crime who afterwards leaves the State is a fugitive from justice; and, for purposes of interstate rendition, it does not matter what motive induced the departure.

4. The purpose of the writ of *habeas corpus* is not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried.

5. The Federal Constitution peremptorily requires that upon proper demand the person charged with crime shall be delivered to be removed to the State having jurisdiction of the crime. There is no discretion allowed nor any inquiry into motives; nothing is said in regard to *habeas corpus* and the technical sufficiency of the indictment is not open.

6. Questions as to the sufficiency of an indictment charging an admittedly insane person with having committed a crime, are for the courts of the State having jurisdiction of the crime to determine according to the law of that State. They cannot be determined by the courts of another State on *habeas corpus* proceedings in interstate rendition.

7. The constitutionally required surrender of an identified fugitive on a demand made in due form is not to be interfered with by the summary process of *habeas corpus* upon speculation as to what ought to be the result of a trial in the place where the Constitution provides for its taking place.

Cases cited in the opinion: *Roberts v. Reilly*, (1885), 116 U. S. 80; *Pettibone v. Nichols*, (1906), 203 U. S. 192; *Munsey v. Clough*, (1904), 196 U. S. 364; *Pierce v. Creecy*, (1908), 210 U. S. 387; *Kentucky v. Dennison*, (1860), 24 How. 66.

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§ 215a. (27.) *Innes v. Tobin*, (1916), 240 U. S. 127, 36 Sup. Ct. 290, 60 L. ed. 563.—One Ida May Innes was arrested in the State of Oregon charged with being a fugitive from the justice of the State of Texas, the governor of the State of Oregon honored a requisition made by the governor of Texas for the delivery of the accused to the messenger or agent of Texas and authorizing her removal as a fugitive from justice to the State of Texas where an alleged crime had been committed by her. The accused was taken and there tried for murder and a conspiracy to commit murder and acquitted. She was, however, not released from custody because she was ordered by the governor of Texas, under a requisition from the governor of the State of Georgia, to be held for delivery to a messenger or agent of that State for removal to that State as a fugitive from justice. At once, early in January, 1915, the accused sued out a writ of *habeas corpus* in the district court of Bexar county, Texas, alleging that she was not a fugitive from the justice of the State of Georgia and should be discharged from custody, but upon a hearing in the district court she was remanded to the custody of the messenger or agent of the State of Georgia. An appeal was taken by her to the Texas criminal court of appeals where the judgment of the lower court was affirmed. *Ex parte Ida May Innes*, (1915), — Tex. Crim. —, 173 S. W. 291.

A writ of error was sued out of the Supreme Court of the United States on her behalf and the finding of the Texas criminal court of appeals was reviewed by the court of last resort. Mr. Chief Justice White delivered the opinion of the court holding that,

1. Prior to the adoption of the Constitution fugitives from justice were surrendered between the States conformably to what were deemed to be the controlling principles of comity.

2. It was intended by art. IV of the Constitution to fully embrace the subject of rendition of fugitives from justice between the States and to confer authority upon Congress to deal with that subject.

3. The act of Febraury 12, 1793, c. 7, 1 Stat. 302, now Rev. Stat. sec. 5278, was enacted for the purpose of controlling the subject of interstate rendition and its provisions were intended to be dominant and, so far as they operated, controlling and exclusive of State power.

4. Construed in the light of the principles which the statute embraces, the provisions of Rev. Stat. sec. 5278, expressly or by necessary implication, prohibit the surrender in one State for removal as a fugitive from justice to another State of a person who clearly was not and could not have been such a fugitive from the demanding State.

5. The doctrine of asylum applicable under international law by which a person extradited from a foreign country cannot be tried for an offense other than the one for which the extradition was asked does not apply to interstate rendition.

6. Where there is nothing in the record of a *habeas corpus* proceeding to show that the person held for surrender under interstate rendition had not been in the demanding State there is no basis for this court assuming that the rendition order conflicted with Rev. Stat. sec. 5278, in that respect because the record did show that such person had come into the surrendering State from a State other than the one demanding.

7. An act of Congress which leaves a subject with which Congress has power to deal under the Constitution unprovided for does not necessarily take the matters within the unprovided area out of any possible State action; and so held that the exclusive character of sec. 5278, Rev. Stat., does not relate to the rendition between States of criminals found in, but who had not fled to, the surrendering State but had been involuntarily brought therein.

8. In construing an act of Congress, this court will not presume that because its provisions were not coterminous with the power granted to Congress, it was so framed for the purpose of leaving the subject, so far as unprovided for, beyond the operation of any legal authority whatever, State and National.

Cases cited in the opinion are as follows: *Kentucky v. Dennison*, (1860), 24 How. 66; *Prigg v. Pennsylvania*, (1842), 16 Pet. 539; *Taylor v. Taintor*, (1872), 16 Wall. 366; *Appleyard v. Massachusetts*, (1906), 203 U. S. 222; *Mahon v. Justice*, (1888), 127 U. S. 700; *Lascelles v. Georgia*, (1893), 148 U. S. 537; *Ex parte Reggel*, (1885), 114 U. S. 642; *Roberts v. Reilly*, (1885), 116 U. S. 80; *Hyatt v. Corkran*, (1903), 188 U. S. 691; *Bassing v. Cady*, (1907), 208 U. S. 386.

CHAPTER XXII.

ARREST AND RETURN OF FEDERAL PRISONERS.

- § 216. Interstate Rendition and Federal Removal.
- § 217. The Removal Statute.
- § 218. Proceedings for Removal.
- § 219. Power of the District Court.
- § 220. Rights of the Accused.
- § 221. Removal to and from the Philippine Islands.

§ 216. Interstate Rendition and Federal Removal.—While the arrest and the removal of a Federal prisoner, charged with an offense against the *laws of the United States*, from one district or State to another, has no connection whatever with interstate rendition, yet the ultimate object being the same, the arrest and deportation of the accused to the scene of the alleged crime, it has been thought advisable to incorporate herein a brief outline of the procedure necessary to secure the arrest and removal of a person so accused under the Federal statutes. In both proceedings the person accused is charged with being a fugitive from justice, and his return to the jurisdiction where the alleged crime was committed, is dependent in both instances wholly and entirely upon the authority of the laws of the United States. If charged with the commission of a crime *against the laws of the State or Territory* from which he has fled, then his arrest and return to such State or Territory, is based on the Federal law of interstate rendition; but, if charged with *violating a law of the United States*, in any Federal district of the Union, his arrest and removal to the scene of his crime, is based on the Federal law of removal.

§ 217. The Removal Statute.—The Federal law of removal was previously known as section 33 of the judi-

ciary act of 1789, but since the revision of the statutes is known as section 1014, Revised Statutes of the United States, and is as follows:

For any crime or offense against the United States, the offender may, by any justice or judge of the United States or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

The Federal district court of the State of Washington in *Ex parte Krause*, (1915), 228 Fed. 547, held that removal under this section not applicable for violation of the laws of a Territory, the proper remedy being rendition under section 5278, U. S. Revised Statutes.

§ 218. Proceedings for Removal.—From this statute it will be observed that where a person is arrested in a district different from that in which he is indicted, as a matter of right he is entitled to be taken to the nearest and most convenient United States commissioner, who inquires into his identity, and being satisfied that such person arrested is the identical person indicted in another district and that probable cause has been proven, such commissioner shall fix bail for his appearance before the proper court of the proper district. But should

the prisoner be unable to make the bail, application is then made to the United States district judge for a warrant of removal, under section 1029 of the Revised Statutes of the United States, and such warrant, when issued, is the authority for the deportation of the accused to the district or State where the crime was committed.

In *United States v. Rundlett*, (1854), 2 Curt. 41, it was held that it was the intention of Congress, by the use of these words in section 1014; *agreeably to the usual mode of process against offenders in such State*, to assimilate all proceedings for holding accused person to answer before a court of the United States to proceedings had for similar purposes by the laws of the State where such proceedings should take place. (*Benson v. Henkel*, (1904), 198 U. S. 12.)

§ 219. The Power of the District Court.—Before the district judge of the United States of the district wherein the accused is arrested, shall issue an order for his removal to the district or State, wherein the crime was committed, he shall grant to the accused a hearing as to whether there is probable cause to warrant the belief that he is guilty of the commission of the crime alleged to have been committed in the district or State seeking his return. In *Tinsley v. Treat*, (1907), 205 U. S. 20, the Supreme Court of the United States, held that the accused, in such hearing before the district court, might offer evidence in opposition to the indictment, tending to show that he did not commit the offense charged within the district where the indictment alleges that it occurred. A district judge or a commissioner, acting as a committing magistrate, has the same power as a State magistrate and no greater authority, and such evidence as is heard during the preliminary examination must be in accordance with the rules of practice of the State wherein such investigation is had.

§ 220. Rights of the Accused.—The accused person has a right to testify in his own behalf, may be represented by counsel upon the preliminary examination and

can call such witnesses to contradict or to explain the testimony of the witnesses for the prosecution as he may think proper. In *Tinsley v. Treat*, (1907), *supra*, it was held that a district judge to whom application is made for the warrant of removal after the commitment of the accused, does not perform a mere ministerial function but it is his duty to look into the indictment, warrant or complaint to ascertain whether an offense against the United States is charged and whether there is probable cause to believe that the accused is guilty of the crime charged.

Where the accused is apparently unable to give bond and is committed to prison, he is entitled to a reasonable opportunity in which to obtain bail and to send him arbitrarily to jail and remove him forthwith to another jurisdiction, is to deny him of one of his substantial rights. This was the doctrine enunciated in the case of *Bagnall v. Albeman*, (1853), 4 Wis. 163, by the supreme court of the State of Wisconsin.

§ 221. Removal to and from the Philippine Islands.—On February 9, 1903, an act of Congress was passed and approved by the president, providing for the arrest and removal to and from the Philippine Islands of persons charged with violating the laws of the United States, either in the Philippine Islands or in the United States. The act of Congress is as follows:

The provisions of section ten hundred and fourteen of the Revised Statutes, so far as applicable, shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrest-

ed and imprisoned, or bailed, as the case may be, pending the issuance of a warrant for his removal to the United States, which warrant it shall be the duty of a judge of the court of first instance seasonably to issue, and of the officer or agent of the United States designated for the purpose to execute. Such officer or agent, when engaged in executing such warrant without the Philippine Islands, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safe-keeping and the execution of the warrant. (32 Stat. at L. 103.)

For a more complete discussion of all phases of removal of a person from one district to another see the following cases: *In re* Terrell, (1892), 51 Fed. 213; *In re* Dana, (1895), *supra*; *In re* Price, (1897), 83 Fed. 831; *Price v. McCarty*, (1898), 89 Fed. 84; *U. S. v. Lee*, (1898), 84 Fed. 627; *Sternaman v. Peck*, (1897), 80 Fed. 883; *U. S. v. Greene*, (1900), 100 Fed. 942; *Stewart v. U. S.*, (1902), 119 Fed. 93; *U. S. v. Yarbrough*, (1903), 122 Fed. 293; *In re* Runkle, (1903), 125 Fed. 998; *Benson v. Henkel*, (1904), *supra*; *In re* Benson, (1904), 130 Fed. 486; *Ex parte* Black, (1906), 147 Fed. 836; *U. S. v. Wimsatt*, (1908), 161 Fed. 586; *U. S. v. Campbell*, (1910), 179 Fed. 762.

ADDENDA: LATEST CASES.

Since the foregoing pages were written and placed in type the author has found a number of new cases on interstate rendition, the questions raised and decided therein being of sufficient importance to merit this special reference, and it being his desire to give the profession the benefit of the latest ruling of the courts on this branch of the law, he has concluded to add these lines to the text, briefly referring to such newly reported cases, that the reliability of this work may not be questioned because of its silence as to these cases.

In *Innes v. Tobin*, (1916), 240 U. S. 127, (see *ante* section 215 a.) will be found the twenty-seventh case on interstate rendition since 1860 decided by the United States Supreme Court, and in this the last case Mr. Chief Justice White on behalf of the court passed upon seven fundamental principles governing the arrest and return of fugitives from the justice of one State to another.

In *Ex parte Duddy*, (1914), 219 Mass. 548, 107 N. E. 364, the supreme judicial court, the court of last resort in the State of Massachusetts, held that a fugitive from justice is one who *actually* commits a crime in one State and when wanted to answer for such crime by its courts is found in another State. (See *ante* section 50.)

In *Commonwealth v. Matthews*, (1914), 42 Pa. Co. Ct. 618, it was held by a common pleas court of Pennsylvania, that where the indictment in the demanding State charges that the crime was committed on a particular date, and the incontrovertible evidence of the relator and his witnesses show that he left the State before that date, he is entitled to his discharge. (See *ante* section 50.)

In *Wheeler v. Palmer*, (1914), 42 App. Cases, (D. C.) 395, the court of appeals of the District of Columbia

held that, an indictment on which a rendition proceeding is founded is not to be judged by any technical standard and is sufficient if it shows that the fugitive has been, however inartificially, charged with a crime against the laws of the State from which he fled. However, should the indictment fail to charge a crime, the accused is entitled to his discharge. (See *ante* section 86.)

In *State ex rel. Burnett v. Flournoy*, (1915), 136 La. 852, 67 So. 929, the supreme court of the State of Louisiana held that infancy could not be pleaded in interstate rendition.

In *In re Thompson*, (1915), 85 N. J. Eq. 221, the court of chancery of the State of New Jersey, through its chancellor, Edwin Robert Walker, held, in an elaborate and carefully prepared opinion, that one arrested in that State as a fugitive from justice of another State, was not entitled to bail *pendente lite*, in the absence of a statute allowing bail, as the right to bail did not exist at common law. (See *ante* section 159.)

In *People ex rel. Currier v. Chief of Police*, (1916), 97 Misc. 254, 162 N. Y. S. 845, the county court of Monroe county, New York, held that an information *duly verified*, charging a crime in another State, is sufficient to require surrender of accused on rendition proceedings. And where the accused refused to offer proof that he is not a fugitive from justice, the statements of the governor's warrant must be taken as conclusive and accused must be surrendered to the demanding State for deportation. (See *ante* sections 80 and 183.)

In *Kelley v. Mangum*, (1916), 145 Ga. 57, 88 S. E. 556, the supreme court of the State of Georgia in an interstate rendition case, held that where a fugitive from the justice of the State of Missouri, was convicted of a crime in a United States district court of the State of Alabama, and was committed to the United States penitentiary in Georgia, to serve his sentence, upon his release therefrom at the expiration of such term, upon requisition of the governor of the State of Missouri the governor of Georgia could issue his warrant of rendition and could

have such person arrested for deportation to the demanding State. The fact that the alleged fugitive from justice did not come into the State voluntarily does not entitle him to discharge on *habeas corpus*. (See *ante* section 195.) In a similar case to the foregoing, *Hart v. Mangum*, (1917), — Ga. —, 91 S. E. 543, the doctrine enunciated by the supreme court of Georgia in the *Kelley* case was reaffirmed.

In *Cozart v. Wolf*, (1916), — Ind. —, 112 S. E. 241, the supreme court of the State of Indiana held that, one in actual custody of the officers of either a State or Federal court is not subject to arrest and rendition as a fugitive from justice of another State, except in very urgent cases, in the absence of a waiver by the first court of its jurisdiction. And one released on bail is not in actual custody of the court during the time he is at liberty under bond and may be arrested for a crime, committed in another State, and rendited to and tried in such other State. Citing *Ex parte Marrin*, (1908), 64 Fed. 631, and *Mackin v. People*, (1886), — Ill. —, (unreported), 8 N. E. 178. (See *ante* section 128).

Appendix

STATE STATUTES ON FUGITIVES FROM JUSTICE.

I. ALABAMA.

(From the Code of Alabama, 1907, Vol. III. Sections 6940 to 6953, pages 560 to 562.)

Section 6940. FUGITIVE FROM OTHER STATE DELIVERED UPON DEMAND OF EXECUTIVE.] Any person charged in any State or Territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this State, must, on the demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this State, to be removed to the State or Territory having jurisdiction of such crime.

This is practically the language and the *command* of the Constitution and act of Congress of 1793, relating to interstate rendition, and without being *specially* enacted by the legislature of Alabama, was already the supreme law of the land, and therefore, binding *specifically* upon Alabama and every other State and Territory of the Union. *Ex parte McKean*, (1878), 3 Hughes, (U. S.) 23.

See *Morrill v. Quarles*, (1855), 35 Ala. 544; *In re Mohr*, (1883), 73 Ala. 503; *Cunningham v. Baker*, (1893), 104 Ala. 160, 16 So. 68; *Barriere v. State*, (1904), 142 Ala. 72, 39 So. 55. The latter case upholding the right of the fugitive or respondent to appeal from the order of the court or judge in *habeas corpus* on interstate rendition procedure, directly to the supreme court of the State.

Section 6941. WARRANT OF ARREST ISSUED BY MAGISTRATE.] A warrant for the apprehension of such person may be issued by any magistrate who is authorized to issue a warrant of arrest.

Section 6942. ARREST AND COMMITMENT: COPY OF INDICTMENT OR OTHER JUDICIAL PROCEEDINGS CONCLUSIVE EVIDENCE.] The proceedings and commitments of the person charged are in all respects similar to those provided in this Code for the arrest and commitment of a person charged with a public offense, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or Territory in which he is charged to have committed the offense, must be received as conclusive evidence before the magistrate.

Section 6943. COMMITMENT TO AWAIT REQUISITION: BAIL.] If, from the examination, it appears that the person charged has committed the crime alleged, the magistrate must, by warrant reciting the accusation, commit him to jail for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive to be made under the warrant of the executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he give bail as provided in the next section, until he is legally discharged.

Section 6944. BAIL EXCEPT IN CAPITAL CASES: CONDITION AND REQUISITES OF BOND.] The magistrate must, unless the offense with which the fugitive is charged is shown to be an offense punished capitally by the laws of the State in which it was committed, admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this State.

Section 6945. WHEN DISCHARGED ON BAIL.] If such person is not arrested under the warrant of the governor, before the expiration of the time, specified in the

warrant, bond or undertaking, he must be discharged from custody on bail.

Section 6946. JAIL FEES PAID IN ADVANCE.] No jailor is bound to receive any person committed under a warrant issued under the provisions of this chapter, unless his jail fees for the time specified in such warrant are paid in advance.

Section 6947. FORFEITURE OF BAIL.] If the fugitive is discharged on bail, and fails to appear and surrender himself, according to his bond or undertaking, the magistrate must indorse thereon "forfeited," sign his name thereto, and return it to the clerk of the circuit court by the first day of the next term; and a conditional judgment must be rendered thereon, and proceedings had, as in case of bonds or undertakings forfeited in the courts, the indorsement of the magistrate being presumptive evidence of the forfeiture.

Section 6948. AT EXPIRATION OF TIME.] At the expiration of the time specified in the warrant, the magistrate may discharge or recommit him to a further day, or may take bail for his appearance and surrender, as provided in section 6944; and on his appearance, or if he has been bailed and appear according to the terms of his bond or undertaking, the magistrate may either discharge him therefor, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

Section 6949. IF PROSECUTION ETC.] If a criminal prosecution has been instituted against such person under the laws of this State the governor may or not, at his discretion, surrender such person on the demand of the executive of another State, before he has been tried and punished, if convicted, or discharged.

Section 6950. GOVERNOR'S WARRANT.] A warrant from the executive may be directed to the sheriff, coroner, or other person whom he may think fit to entrust with the execution of the same.

Section 6951. EXECUTED WHERE AND HOW.] Such warrant authorizes the officer or person to whom it is di-

rected to arrest the fugitive at any place within the State, and to require the aid of all sheriffs and constables to whom the same is shown, to aid and assist in the execution thereof.

Section 6952. **AUTHORITY OF ARRESTING OFFICER.]** Every such officer or person has the same authority in arresting the fugitive to command assistance therein, as sheriffs and other officers by law have in the execution of criminal process directed to them, with the like penalties on those who refuse their assistance.

Section 6953. **CONFINEMENT IN JAIL: WHEN NECESSARY.]** The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

II. ARKANSAS.

(From Kirby's Digest of the Statutes of Arkansas, 1906, chapter 72, pages 838-839-840.)

ARREST OF FUGITIVES FROM JUSTICE UPON REQUISITION.

Section 3669. Whenever the executive of any other State or Territory of the United States shall demand of the executive of this State any person as a fugitive from justice, having complied with the requisitions of the act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant, under the seal of the State, directed to any sheriff, coroner, or other person whom he may think fit to entrust with the execution of such warrant.

Section 3670. Such warrant shall authorize the person to whom it may be directed to arrest the fugitive anywhere within the limits of this State, and to convey

him to any place within the State which the executive may in his warrant direct; and commanding all sheriffs, coroners, and other officers, to whom the same may be shown to aid and assist in the execution thereof.

Section 3671. Every such warrant may be executed in any part of the State, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested, as sheriffs and other officers by law have in the execution of civil and criminal process directed to them, with like penalties on those who refuse their assistance.

Section 3672. The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant, and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route.

Apparently a person so held in custody by virtue of the governor's warrant of rendition in the State of Arkansas, cannot be discharged on writ of *habeas corpus*, however *unlawful* the arrest and detention. The courts of that State deny the privilege of the writ to all persons charged with being fugitives from justice and arrested therein, basing the right for such denial on Section 3862, Kirby's Digest of the Statutes of Arkansas, 1906.

Section 3673. The expenses which may accrue under the foregoing provisions of this chapter, being first ascertained by the executive, shall, on his certificate, be allowed and paid out of the State treasury.

ARREST PRIOR TO REQUISITION.

Section 3674. Whenever any person within this State shall be charged, on the oath or affirmation of any creditable person, before any judge or justice of the peace of this State, with the commission of any crime in any

other State or Territory of the United States, and that such person hath fled from justice, such judge or justice shall issue his warrant for the apprehension of such person.

Section 3675. If on examination it shall appear to the judge or justice that the person charged is guilty of the crime as alleged, he shall commit him to the jail of the county, or if the offense is bailable, to take bail for his appearance at the next term of the circuit court in the county.

Section 3676. The judge or justice shall proceed in the examination of such person in the same manner as is required when a person is brought before such officer charged with an offense against the laws of this State, and shall reduce the examination to writing, and make return thereof, as in other cases; and shall also send a copy of the examination and proceedings to the executive of this State without delay.

Section 3677. If, in the opinion of the executive, the examination contains sufficient evidence to warrant the finding of an indictment, he shall forthwith notify the executive of the State or Territory in which such crime is alleged to have been committed of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of the indictment to accompany the demand.

This section of the Arkansas statute is in direct contravention of the Federal Constitution and law on interstate rendition, in proposing to surrender the fugitive from justice *without* a legal charge of crime from the demanding State, as will be seen by a reference to the authorities cited in Chapter X of this work, on "The Charge of Crime."

Section 3678. When a demand shall be made for the offender the executive shall forthwith issue his warrant, under the seal of the State, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger

as shall be therein named, to be conveyed out of the State.

Section 3679. If the accused shall be at large, on bail or otherwise, the sheriff shall forthwith arrest him, anywhere within the State, and surrender him agreeably to the command of the warrant.

Section 3680. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the circuit court may discharge the recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

Section 3681. In no case shall the accused be kept in prison, or held to bail, beyond the end of the second term of the circuit court after the arrest, if no demand shall be made for him within that time, but shall be discharged.

Section 3682. If any recognizance entered into under the provisions of this chapter shall be forfeited, it shall inure to the benefit of the State.

Section 3683. Whenever the governor of this State shall demand any fugitive from justice from the executive of another State or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive and convey such fugitive to the sheriff of the county in which the offense was committed, or is by law cognizable.

Section 3684. The expenses which may accrue under the provisions of the preceding section, being ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the treasury as other demands against the State.

III. ARIZONA.

(From the Revised Statutes of Arizona, 1913, Penal Code, Title XXVI, pages 267, 268 and 269.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 1414. A person charged in any State of the United States with treason, felony or other crime, who shall flee from justice and be found in this State must on demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this State, to be removed to the State or Territory having jurisdiction of the crime.

Section 1415. A magistrate may issue a warrant for the apprehension of a person so charged who shall flee from justice and be found in this State.

Section 1416. The proceedings for arrest and commitment of the person charged shall in all respects be similar to those provided in this code for the arrest and commitment of a person charged with a public offense committed within this State, except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 1417. If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

Section 1418. The magistrate may admit the person to bail by recognizance with sufficient sureties, and in such sum as he may deem proper, for his appearance be-

fore him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the governor of this State.

Section 1419. Immediately upon the arrest of the person charged the magistrate shall give notice thereof to the county attorney.

Section 1420. The county attorney shall immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the court of the city or county within the State or Territory having jurisdiction of the offense to the end that a demand may be made for the arrest and surrender of the person charged.

Section 1421. The person arrested shall be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or recognizance, he is arrested under the warrant of the governor of this State.

Section 1422. The magistrate shall make return of his proceedings to the superior court of the county, which shall thereafter inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time of his arrest has not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be canceled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance.

Section 1423. The governor of this State may, in cases authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any other State or Territory, or the executive authority of any foreign government, any fugitive from justice, or person charged with treason.

Section 1424. When the governor of this State, in the exercise of the authority conferred by section two, article four, of the Constitution of the United States, or by the laws of this State shall demand from the executive authority of any State or Territory of the United States, or any foreign government, the surrender to the au-

thorities of this State of a fugitive from justice, the accounts of the persons employed by him for that purpose shall be paid by the county in which the offense was committed, upon presentation of the account to the board of supervisors; and should the board of supervisors neglect to pay such claim within thirty days after the presentation thereof the superior court may, upon petition filed in such court, order the payment of such claim or such portion thereof as the court may deem proper.

Section 1425. No compensation, fee, or award of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in the preceding section. Every person who violates any of the provisions of this section is guilty of a misdemeanor.

IV. CALIFORNIA.

(From Kerr's Codes of California, 1909. Vol. 4, Title 12, Chapter IV, pages 871 to 877, bottom paging.)

Section 1548. FUGITIVES FROM OTHER STATES, WHEN TO BE DELIVERED UP.] A person charged in any State of the United States with treason, felony, or other crime, who flees from justice and is found in this State must on the demand of the executive authority of the State from which he fled, be delivered up by the governor of this State to be removed to the State having jurisdiction of the crime.

This section has been fully construed by the supreme court of California in *Ex parte Cubreth*, (1875), 49 Cal. 436, 1 Am. Crim. 169; *In re Rosenblat*, (1876), 51 Cal. 285, 2 Am. Crim. 215.

Section 1549. MAGISTRATE TO ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of

a person so charged, who flees from justice and is found in this State.

Section 1550. PROCEEDINGS FOR THE ARREST AND COMMITMENT OF THE PERSON ACCUSED.] The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of an indictment found or other judicial proceedings had against him in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

See *In re Rosenblat, supra*.

Section 1551. WHEN AND FOR WHAT TIME TO BE COMMITTED.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

Section 1552. HIS ADMISSION TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sums as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

Section 1553. MAGISTRATE MUST NOTIFY THE DISTRICT ATTORNEY.] Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

Section 1554. DUTY OF DISTRICT ATTORNEY.] The district attorney immediately thereafter must give notice to the executive authority of the State, or to the prosecuting attorney or presiding judge of the court of the city or county within the State having jurisdiction of the

offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Section 1555. PERSON ARRESTED, WHEN TO BE DISCHARGED.] The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 1556. MAGISTRATE TO RETURN HIS PROCEEDINGS TO THE SUPERIOR COURT.] The magistrates must return his proceedings to the superior court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or readmit him to bail to appear and surrender himself within a time specified in the undertaking.

Section 1557. FUGITIVES FROM THIS STATE.] When the governor of this State, in the exercise of the authority conferred by section 2, article IV of the Constitution of the United States, or by the laws of this State, demands from the executive authority of any State of the United States, or of any foreign government, the surrender to the authorities of this State of a fugitive from justice, who has been found and arrested in such State or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the State treasury.

Section 1558. NO FEE OR REWARD TO BE PAID OR RECEIVED BY PUBLIC OFFICER PROCURING SURRENDER OF FUGITIVE.] No compensation fee, or reward of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in said section.

The supreme court of the State of California in *Ex parte Dimmig*, (1887), 74 Cal. 166, in referring to section 1549, held that "a magistrate has no jurisdiction to issue a warrant of arrest without some evidence tending to show the guilt of the party named in the warrant. The original information may be sufficient, though made only upon information and belief, if followed by the deposition of the complainant, or some other witness, stating facts tending to show the guilt of the party charged. Of course, where there was some evidence upon which the magistrate acted, we would not interfere. It also may be true that the original information might be treated as a deposition; and in such view, if it contained positive evidence of facts tending to show guilt, it might be sufficient basis for the issuance of a warrant. But a mere affidavit in the form of an information, containing no evidence, and followed by no deposition stating any fact tending to show guilt, is insufficient to support a warrant. The liberty of a citizen cannot be violated upon the mere expression of an opinion under oath that he is guilty of a crime."

V. COLORADO.

(From the Colorado Statutes Annotated, 1911, Vol. 3, Chapter LV. 1780 to 1784, bottom paging.)

FUGITIVES.

2681. REQUISITION—GOVERNOR ISSUE WARRANT—SHERIFF ARREST.] Section 1. Whenever the executive of any other State or of any Territory of the United States shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisitions of the act of Congress in that case made and

provided, it shall be the duty of the executive of this State to issue his warrant under the seal of the State to apprehend the said fugitive, directed to any sheriff, coroner or said executive may think fit to entrust with the execution of said process. Any of the said persons may execute such warrant anywhere within the limits of this State, and convey such fugitive to any place within this State, which the executive in his warrant shall direct.

2682. DEMAND OF FUGITIVE FROM THIS STATE—WARRANT TO MESSENGER.] Whenever the executive of this State shall demand a fugitive from justice from the executive of any other State or Territory, he shall issue his warrant under the seal of the State, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offense was committed.

2683. EXPENSES, HOW PAID.] The expenses which may accrue under the last preceding sections, shall be presented to the board of county commissioners of the county wherein the offense was committed, who shall immediately audit and ascertain the amount thereof and issue a warrant therefor on the treasurer of said county. The treasurer shall pay all warrants so issued, upon presentation, out of the general funds of the county as now provided by law for the payment of orders and warrants.

2684. ARREST OF CRIMINALS FROM OTHER STATES—EXAMINATION—NOTICE TO GOVERNOR—WARRANTS—PROCEEDINGS.] Section 4. Whenever any person within this State shall be charged, upon the oath or affirmation of any credible witness before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, in any other State or Territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If, upon examination, it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offense alleged

against him, it shall be the duty of the judge or justice to commit him to the jail of the said county, or if the offense is bailable according to the laws of this State, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next district court of the county shall also send a copy of the examination and proceedings where such examination is had, as in other cases, and to the executive of this State, so soon thereafter as may be. If, in the opinion of the executive of this State, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or Territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand. When such demand shall be made, the executive of this State shall forthwith issue his warrant under the seal of the State, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this State. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State and to surrender him agreeably to said warrant.

2685. APPEARANCES OF PARTY BAILED—DISCHARGE.] Section 5. In cases where a party shall have been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the said recognizance, or continue it according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time that hath intervened since the arrest of the party and the strength of

the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from the prison, or exonerated from his recognizance, as the case may be.

2686. FORFEITURE OF RECOGNIZANCE. Section 6. If the recognizance shall be forfeited, it shall inure to the benefit of the State.

2687. SECURITY FOR COSTS — DEFAULT — FEE-BILL— EXECUTION FEES.] Section 7. In all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, as above, which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the district court, and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee-bill as in other cases, to be served on the persons named in the bond, or any of them, which fee-bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next district court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee-bill has been served, and when the said fees are collected shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing herein contained shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper.

VI. CONNECTICUT.

(From the General Statutes of Connecticut, 1902. Chap. 99, Sections 1564 to 1577, pages 423 to 426.)

FUGITIVES FROM JUSTICE AND REQUISITIONS.

Section 1564. GOVERNOR MAY APPOINT AGENTS TO RECEIVE FUGITIVES.] The governor may appoint agents to demand and receive, from the executive authority of another State, any fugitive from justice, or person charged with any high crime in this State; and any application to the governor for that purpose shall be sustained by a properly attested copy of the record of the proceedings against the accused person, with affidavits of one or more of the principal witnesses.

Section 1565. INVESTIGATION OF APPLICATION.] Any prosecuting officer when required by the governor, shall forthwith investigate the grounds of such application and report to him all the material circumstances which may come to his knowledge, and his opinion as to the expediency of the demand.

Section 1566. PROCEEDINGS ON REQUISITIONS UPON GOVERNOR.] When a demand shall be made upon the governor, by the executive authority of another State for the surrender of any person, charged in such State with any high crime, any prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered; and if the governor shall find that such demand is conformable to law and ought to be complied with, he shall issue his warrant, directed to any proper officer, requiring the arrest of such person and his delivery to the agent appointed to receive him.

Section 1567. FUGITIVE MAY APPLY FOR WRIT OF HABEAS CORPUS.] No person arrested upon such warrant shall be delivered over to the agent appointed to receive him, until he has been informed of the demand made for his surrender, and of the crime with which he is charged,

and has had an opportunity to apply for a writ of *habeas corpus* if he claim such right of the officer making the arrest. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the State's Attorney of the county in which the arrest is made.

Section 1568. PENALTY FOR NONCOMPLIANCE WITH PRECEDING SECTIONS.] Any officer who delivers to such agent for extradition a person in his custody upon such warrant, without having complied with the provisions of section 1567, shall be fined not more than one thousand dollars, or be imprisoned not more than one year, or both.

Section 1569. CONVEYANCE THROUGH THIS STATE OF FUGITIVES APPREHENDED IN OTHER STATES.] When an offender shall be apprehended in any neighboring State, and it may be necessary to convey him through this State to the place where the offense was committed, any justice of the peace, upon application made and proof that lawful process has issued against such offender, shall issue a warrant, directed to any proper officer, or any person by name, who shall be sworn to the faithful performance of his duty, commanding him to cause such offender to be conveyed to the line of this State, nearest to the State where the offense was committed, there to be delivered to some proper officer ready to receive him; and the person to whom such warrant is directed shall obey it upon tender of the lawful fees therefor.

Section 1570. FUGITIVE MAY BE HELD UPON INFORMATION OF STATE'S ATTORNEY.] When any person is found in this State charged with an offense committed in another State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the executive of such other State or Territory, any judge of the superior court, upon the information of the State's attorney of the county where such information is made, and any city or police court having criminal jurisdiction, upon the complaint of the proper prosecuting officer of such court, may issue a warrant to

arrest the person charged and bring him before the authority issuing such warrant, or some other authority empowered by this act to issue the same to answer such information or complaint as in other criminal cases; but before such warrant shall be issued some person shall make affidavit before the authority issuing the same to the facts necessary to bring the case within the provisions of this law.

Section 1571. COURT MAY RELEASE FUGITIVE ON BAIL.] If, upon the hearing on such information or complaint, the judge or court shall be satisfied upon due inquiry that the person arrested is a fugitive from justice, and that the proper authorities of such other State or Territory intend and are about to make a demand upon the executive of this State for the return of such person, he shall be required, if charged with an offense bailable in the State or Territory where committed, to recognize in a reasonable sum with sufficient sureties to appear before such judge or court at a future day, and to abide the order of such court or judge and in appointing the day for the appearance of such person a reasonable time shall be allowed in which to procure the warrant of the executive of this State for the arrest of such person.

Section 1572. FUGITIVE MAY BE COMMITTED TO JAIL, WHEN.] If such person does not so recognize, or if the offense with which he is charged is not bailable in the State or Territory where committed, he shall be committed to the county jail in the county where such proceedings are had and there detained until the day appointed for his appearance, in like manner as if the offense charged had been committed within this State.

Section 1573. DISPOSITION OF FUGITIVE.] If the person so recognized or committed appear before such judge or court upon the day ordered he shall be discharged unless he is demanded by some person authorized by the warrant of the executive of this State to receive him, or unless such judge or court shall find cause to order his appearance at some future day, when he may be required to recognize or be committed and detained as before.

Section 1574. BONDS UNDER PRECEDING SECTIONS TO BE TAKEN TO THE STATE.] All recognizances taken under sections 1571, 1572, and 1573 shall be taken to the State.

Section 1575. NOTICE OF ARREST TO BE GIVEN.] The judge or court before whom such person shall have been examined and recognized or committed shall immediately cause written notice to be given to the State's attorney of the county where the examination takes place, if the proceedings are not had upon the information of such attorney, of the name of such person and of the cause of his arrest, and the State's attorney, in all cases, shall immediately cause like notice to be given to the governor of the State or Territory, or to the State's attorney, or to the judge of the criminal court of the city or county of the State or Territory in which the offense is charged to have been committed.

Section 1576. ARREST AND DETENTION OF FUGITIVES FROM JUSTICE.] It shall be lawful for any police justice, recorder, judge of any city, borough, town, or police court, or a justice of the peace, on satisfactory evidence under oath being presented to him that application has been made, or is about to be made by the authorities of any other State to the governor of this State for the extradition of any person or persons within the jurisdiction of such magistrate, to issue a warrant or warrants for the arrest of such person or persons and to commit such person or persons to the county jail, or to take bail for his or their appearance from day to day for a period not to exceed thirty days from the date of the arrest of said person or persons; provided, that any person or persons who may be so arrested and committed to the county jail shall not be detained or imprisoned for a longer period than thirty days.

Section 1577. PENALTY OF REMOVING FUGITIVES WITHOUT WARRANT.] Any person who shall take, or cause or procure to be taken, or aid or abet in taking, any person or persons out of this State, without the consent of such person or persons, for the purpose of answering any criminal charge that may have been preferred against

such person or persons in any other State, except upon the warrant or mandate of the governor of this State shall be fined not more than one thousand dollars, or be imprisoned not more than two years, or both.

VII. DELAWARE.

(From the Revised Statutes of Delaware, 1893, Chapter 133, pages 985 to 986.)

AN ACT IN RELATION TO REQUISITIONS FOR FUGITIVES FROM JUSTICE.

Section 1. The governor, in any case authorized by the Constitution of the United States may, on demand, (made in conformity with said Constitution and the acts of Congress pursuant thereto,) deliver over to the executive authority of any other State or Territory any person therein charged with treason, felony, or other crime committed therein; and he may, on application, appoint an agent to demand of the executive authority of any other State or Territory any person charged with felony, who has fled from the justice of this State; but such application must be accompanied by sworn evidence that the party charged is a fugitive from justice, and that the application is made in good faith for the punishment of crime and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process, and also by a duly attested copy of an indictment or an information, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same; such complaint to be accompanied by an affidavit or affidavits to the facts constituting the offense charged by persons having actual knowledge thereof, and such further in support thereof as the governor may require. Fugitive convicts shall also be surrendered and demanded upon the record of their con-

viction, or sworn evidence, duly authenticated, satisfactory to the governor.

Section 2. Where such demand or application is made, the attorney-general shall, if the governor requires it, forthwith investigate the grounds thereof and report to the governor all the material facts which may come to his knowledge; and especially in the case of a person demanded, whether he is held in custody or is under recognizance to answer for any offense against the laws of this State, or by force of any civil process, with an opinion as to the legality and necessity of complying with the demand or application.

Section 3. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, charged with having committed a crime in such State or Territory, the governor may issue a warrant to the Sheriff of the county in which such person so charged may be found, either directing him to arrest and deliver such person to the duly authorized agent of the executive authority making such demand, appointed to receive the fugitive, or in case he shall deem it necessary, commanding said sheriff to arrest and bring such person forthwith before the chief justice or any associate judge of this State, to be examined on the charge; and upon return of the warrant by the sheriff with the person so charged in custody, the judge before whom the person so arrested is brought, and to whom the warrant is returned, shall proceed to hear and examine such charge, and upon proof made in such examination by him adjudged sufficient, shall commit such person to the jail of the county in which such examination is so had for a reasonable time, to be fixed by the judge in the order of commitment and thereupon shall cause notice to be given to the executive authority making such demand, or to the duly authorized agent of such executive authority appointed to receive the fugitive, and on payment of all costs by such agent such fugitive shall be delivered to him, to be thence removed to the proper place of prosecution; and if such agent does not appear within the time

so fixed and pay all costs as aforesaid, the sheriff shall discharge the person so imprisoned. The sheriff or other officer, having a person in custody, arrested pursuant to the governor's warrant, directing him to deliver such person to the agent of the executive authority, demanding him as a fugitive from justice, shall, before delivering him, allow such person, on application by himself, his friends or counsel, a reasonable opportunity for resort to appropriate proceedings for reviewing and determining the legality of the demand and of his arrest and detention. Whenever the attorney-general shall have been called on in such for any service under this act, a reasonable charge for his services may be taxed by the judge as a part of the costs to be paid as aforesaid, and in default thereof to be paid by the State treasurer upon a draft drawn on him for the same. Bail shall be taken for the appearance of the accused by the judge before whom he is brought in pursuance of the provisions of this section, as in other cases.

Section 4. When an affidavit is filed before the chief justice or any judge of the superior court, or a justice of the peace, setting forth that a person charged with the commission of an offense against the laws of any other State or of any of the Territories of the United States, and which if the act had been committed in this State would, by the laws thereof, have been a crime, is, at the time of filing such affidavit, within the county where the same is filed, such judge or justice of the peace shall issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before him the person so charged.

Section 5. When a person is arrested in pursuance of the preceding section and brought before the officer who issued the warrant, the officer shall hear and examine such charge, and upon proof by him adjudged to be sufficient, commit such person to the jail of the county in which such examination is had.

Section 6. When a person is committed to jail by a judge or justice of the peace under the preceding section,

such judge or justice of the peace shall forthwith give, or cause to be given notice, by letter or otherwise, to the sheriff of the county in which such offense was committed, or to the person injured by such offense, or to the person upon whose affidavit the arrest was made; and no person so committed shall be detained longer in jail than is necessary to allow a reasonable time to the persons so notified, after they receive such notice, to apply for and obtain the proper requisition for the person so committed. In all cases arising under this and the two preceding sections, bail shall be taken as in other cases.

VIII. FLORIDA.

(From the General Statutes of Florida, 1906. Title 3, chapter 1, pages 1457 and 1458.)

Section 4078. (3002) GOVERNOR TO CAUSE ARREST OF FUGITIVES ON DEMAND OF EXECUTIVE OF ANOTHER STATE.] The governor when demand shall be made of him by the executive of any other State or Territory of any fugitive from justice in the manner prescribed by the act of Congress, approved February 12, 1793, shall cause said fugitive to be arrested and secured, either by making public proclamation or by issuing a warrant to that effect, as he may deem most expedient, under his hand and the seal of the State, directed to all and singular the sheriffs of this State, therein commanding them to arrest the fugitive therein named; and it shall be the duty of any sheriff upon receiving such order forthwith to execute the same.

See *Ex parte* Powell, (1884), 20 Fla. 806; Kurtz v. State, (1886), 22 Fla. 36.

4079. (3003) SUCH FUGITIVES TO BE COMMITTED.] When any fugitive shall be arrested, he or she shall be immediately committed to some jail or prison; and it shall be the duty of the sheriff or deputy sheriff, upon such arrest being made to notify the governor thereof,

and also of the jail or prison to which said fugitive shall be committed; and said fugitive shall be dwelt (dealt) with as by said act of Congress is provided.

4080. (3004) PERSONS CHARGED WITH BEING FUGITIVES HELD TO AWAIT EXTRADITION OR WARRANT.] Upon an affidavit made before any judge or justice of the peace of this State, that any person within the territorial jurisdiction of such judge or justice of the peace is a fugitive from justice from another State, specifying the State from which such person is a fugitive, and the crime with which he is charged, when and where committed, and that there is a warrant for his arrest issued by a competent court of the State from which he has fled, such judge or justice of the peace may issue a warrant for the arrest of the alleged fugitive, who, when arrested, shall be brought at once before the judge or justice issuing the warrant, or before some other judge or justice having jurisdiction in the premises, and examined; and if, upon such examination, there is found to be probable cause to justify the detention of the alleged fugitive, he may be committed by the judge or justice for a period of time not to exceed ten days, to await the warrant for the extradition of the alleged fugitive; but if, upon such examination, there is not found probable cause to justify the commitment of the alleged fugitive as aforesaid, he shall at once be discharged from custody.

4081. (3005) COSTS TO BE PREPAID.] No judge, justice of the peace, sheriff, constable or other officer shall be obliged to take any action in or about the arrest and detention of such alleged fugitive from justice, nor shall any sheriff or jailor be obliged to receive or keep in custody any such alleged fugitive without pre-payment of the costs to which the officer of whom the service is demanded shall be entitled, and in case of the sheriff or jailor, upon the commitment of such alleged fugitive from justice, the pre-payment of the jail fees, including the cost of feeding the prisoner, and all such fees and costs shall be the same as are or may be provided for by law in like cases, and neither the State of Florida nor

any county thereof shall be responsible or liable for any costs or expenses in the premises.

IX. GEORGIA.

(From Park's Annotated Code of the State of Georgia, 1914 Vol. 6, Penal Code, Article 1, Sections 1352 to 1359, pages 862 to 865.)

FUGITIVES FROM JUSTICE, ARREST WITHIN THIS STATE AND PROCEEDINGS.

Section 1352. FUGITIVES FROM FOREIGN COUNTRIES.] Whenever there is found within this State a fugitive from justice from a foreign State, and by the treaty stipulation of the United States such person is to be surrendered up to the authorities of a foreign State upon requisition from proper officers, the governor, by his warrant, shall cause him to be arrested and delivered over to such officer.

Section 1353. FUGITIVES FROM OTHER STATES.] It is the duty of the governor, under his warrant, to cause to be arrested and delivered up to the proper officer of any other State of the United States, any fugitive from justice from said State, upon demand made of him by the executive of such other State in the manner prescribed by the laws and Constitution of the United States. And if said fugitives shall have assumed another name in the State and the governor is satisfied, by evidence on oath filed in his office, of the identity of such person with the fugitive demanded, he shall state the fact in his warrant for the arrest.

See *Johnson v. Riley*, (1853), 13 Ga. 97; *Pettus v. State*, (1871), 42 Ga. 358; *Blackwell v. Jennings*, (1907), 128 Ga. 264, 57 S. E. 484.

Section 1354. WHEN HE SHALL SUSPEND THE DELIVERY OF FUGITIVES.] If any person demanded as a fugi-

tive from justice is, at the time of such demand, under prosecution for an offense against the laws of this State, the governor shall suspend his delivery until the issue is determined as to his guilt, and if condemned, until he shall have suffered the penalty of the law imposed.

Section 1355. HOW FUGITIVES NOT DEMANDED SHALL BE DISPOSED OF.] When a person charged with the commission of an offense in some other State shall flee into this, and is pursued and caught, or some person in the State, finding shall arrest him, it is the duty of the governor, on oath filed in his office of the commission of the offense, and the identity and locality of the party, to issue his warrant for his arrest, as in other cases, and command his lodgment in any jail in the State, for as long as twenty days, and if, at their expiration, there is no formal demand made by the governor of the State where the offense is alleged to be committed, he shall be discharged from custody, but upon affidavit, made before any proper officer, of the commission of the offense, and of such intended application, the accused shall be held under it five days.

See *Lavina v. State*, (1879), 63 Ga. 513.

Section 1356. OFFICERS MUST EXECUTE WARRANTS FOR THE ARREST OF FUGITIVES.] When the governor or other officer issues such or any other warrant of arrest, it is the duty of the sheriffs, deputy sheriffs, coroners and constables to execute them when placed in their hands.

See *Blackwell v. Jennings*, *supra*.

Section 1357. GOVERNOR MAY OFFER REWARDS.] The governor shall, in his discretion, offer, and cause to be paid, rewards for the detection or apprehension of the perpetrator of any felony committed within this State; such reward shall not exceed the sum of two hundred and fifty dollars in cases of felonies not capital, and not to exceed five hundred dollars in capital felonies; but no such rewards shall be paid to any officer who shall arrest such person in the regular discharge of his duty, by virtue of process in his hands to be executed, nor to any person who has arrested the offender previous to the

publication of the reward; and whenever he receives reliable information that any gin-house has been unlawfully burned, or set on fire, shall offer a reward of not less than two hundred and fifty dollars, nor more than five hundred dollars, for the apprehension of the incendiary or incendiaries with proof sufficient to convict and in no event shall said reward be paid until after the conviction of such offender or offenders.

X. IDAHO.

(From the Revised Codes of Idaho, 1908, Vol. 2, Chapter 4, Sections 8415 to 8426, pages 872 to 874.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 8415. GOVERNOR MAY OFFER REWARD.] The governor may offer a reward not exceeding one thousand dollars, payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the State Prison, or,
2. Of any person who has committed, or is charged with the commission of an offense punishable with death.

Section 8416. SURRENDER OF FUGITIVES FROM OTHER STATES.] A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this State, shall, on demand of the executive authority of the State or Territory from which he shall have fled, be delivered over by the governor of this State, to be removed to the State or Territory having jurisdiction of the crime.

Section 8417. ISSUING WARRANT.] A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this State.

Section 8418. ARREST AND COMMITMENT OF FUGITIVE.]

The proceedings for the arrest and commitment of a person so charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 8419. EXAMINATION AND COMMITMENT OF FUGITIVE.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the accused fugitive under the warrant of the executive authority of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as approved in next section, or until he is legally discharged.

Section 8420. ADMISSION TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking with sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, or for his surrender to arrest upon the warrant of the governor of this State.

Section 8421. NOTICE TO PROSECUTING ATTORNEY.] Immediately upon the arrest of the person so charged, the magistrate must give notice thereof to the prosecuting attorney of the county.

Section 8422. DUTY OF PROSECUTING ATTORNEY.] The prosecuting attorney of the county must immediately thereafter give notice to the executive authority of the State or to the prosecuting attorney or the presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

Section 8423. DISCHARGE OF FUGITIVE.] The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 8424. RETURN OF PROCEEDINGS TO DISTRICT COURT.] The magistrate must return his proceedings to the next district court of the county, which thereupon must inquire into the cause of the arrest and detention of the person charged, and if in custody, or the time of his arrest has elapsed, it may discharge him from detention, or may order his undertaking or bail canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Section 8425. CLAIMS FOR SERVICES OF EXECUTIVE AGENTS.] When the governor of this State, in the exercise of the authority conferred by section 2, article 4, of the Constitution of the United States or by the laws of this State, demands from the executive of any State or Territory of the United States, or of any foreign government, the surrender to the authorities of this State, of a fugitive from justice, who has been found and arrested in such State, Territory or foreign government, the accounts of such person employed by him to bring back such fugitive must be audited by the Board of Examiners and paid out of the State Treasury.

Section 8426. REWARDS FOR SERVICES PROHIBITED.] No compensation, fee or reward of any kind, can be paid to or received by any public officer of this State, for a service rendered or incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him herein, except as provided in section 8425.

XI. ILLINOIS.

(From Hurd's Revised Statutes of Illinois, 1913, Chapter 60, Sections 1 to 17, pages 1323 to 1326.)

FUGITIVES FROM JUSTICE.

Section 1. WARRANT FOR ARREST ON REQUISITION.] Whenever the executive of any other State, or of any Territory of the United States, shall demand of the executive of this State any person as a fugitive from justice and shall have complied with the requisitions of the act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant under the seal of the State, to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of this State, or other person whom the said executive may think fit to intrust with the execution of said process. •

Section 2. ARREST AND DELIVERY.] Any such officer or person may, at the expense of the agent making the demand, execute such warrant anywhere within the limits of this State, and require aid as in criminal cases, and may convey such fugitive to any place within the State which the executive in his said warrant shall direct, and deliver such fugitive to such agent.

Section 3. ARREST OF ACCUSED BEFORE REQUISITION.] When a person is found in this State, charged with an offense committed in another State or Territory, and liable by the Constitution and laws of the United States, to be delivered over upon the demand of the executive of such other State or Territory, any judge, justice of the peace or police magistrate may, upon complaint under oath, setting forth the offense, and such other matters as are necessary to bring the case within the provisions of the law, issue a warrant to bring the person charged before the same or some other judge, justice of the peace or police magistrate within this State, to answer to such complaint as in other cases.

Section 4. COMMIT OR BAIL.] If, upon examination, it shall appear to the satisfaction of such judge, justice or police magistrate, that the person is guilty of the offense alleged against him, it shall be the duty of the said judge, justice or police magistrate to commit him to the jail of the county, or if the offense is bailable according to the laws of this State, to take bail for his appearance at the next circuit court to be holden in that county, except that in the county of Cook the recognizance shall be for the appearance of the accused to the next term of the criminal court of Cook county.

EXAMINATION REDUCED TO WRITING; COPY TO COURT AND GOVERNOR.] It shall be the duty of said judge, justice or police magistrate to reduce the examination of the prisoner, and those who bring him, to writing and to return the same to the next term of the court at which the prisoner is bound to appear, as in other cases, and he shall also send a copy of the examination and proceedings to the executive of this State as soon thereafter as may be.

NOTICE TO THE EXECUTIVE OF OTHER STATE.] If, in the opinion of the executive of this State, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or Territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand.

WARRANT; SURRENDER; COSTS.] When such demand shall be made the executive of this State shall forthwith issue his warrant, under the seal of the State, to the sheriff of the county where the said person is committed or bailed, commanding him, upon the payment of the expense of such proceeding to surrender him to such agent as shall be therein named, to be conveyed out of this State. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, any-

where within the State, and to surrender him agreeably to said warrant.

Section 5. WHEN PRISONER MAY BE DISCHARGED.] If the accused shall appear at the court according to the condition of his recognizance, unless he shall have been demanded by some persons authorized by the warrant of the executive to receive him, the court may discharge the said recognizance, or continue it, or require a further recognizance, or commit the accused on his failing to recognize as required by the court, according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time that has intervened since the arrest and the strength of the evidence against the accused. In no case shall the accused be held in prison or to bail longer than till the end of the second term of the circuit court after his caption, except that in the county of Cook he may be held till the end of the third term of the criminal court of Cook county after his caption. If he is not demanded within that time he shall be discharged from prison, or exonerated from his recognizance, as the case may be.

Section 6. FORFEITURE OF RECOGNIZANCE.] If the recognizance shall be forfeited it shall inure to the benefit of the State.

Section 7. BOND FOR COSTS; PROCEEDINGS ON SAME.] In all cases where complaint shall be made as aforesaid against any fugitive from justice, it shall be the duty of the judge, justice, or police magistrate, to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive; which security shall be by bond, to the clerk of the circuit court, except that in the county of Cook the bond shall be to the clerk of the criminal court of said county, conditioned for the payment of costs as above; which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the circuit court, or criminal court of Cook county, as the case may be; and upon the determination of the proceedings against such fugitive within

that county the clerk shall issue a fee bill as in other cases, to be served on the persons named in the bond, or any of them; which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next court, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same, against those parties on whom the fee bill has been served; and when the said fees are collected shall pay over the same to the persons respectively entitled thereto. Nothing herein contained shall prevent the clerk from instituting suits on said bonds, in the ordinary mode of judicial proceedings, if he shall deem it proper.

Section 8. FUGITIVES FROM ILLINOIS.] Whenever the executive of this State shall demand a fugitive from justice from the executive of any other State, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive said fugitive and convey him to the sheriff of the proper county where the offense was committed.

Section 9. MANNER OF APPLYING FOR REQUISITION.] The manner of making application to the governor of this State for a requisition for the return of a fugitive from justice shall be by petition, in which shall be stated the name of the fugitive, the crime charged in the words of the statute defining the crime, the county in which the crime is alleged to have been committed, the time as nearly as may be when the fugitive fled, the State or Territory to which he has fled, giving facts and circumstances tending to show the whereabouts of the fugitive at the time of the application. Such petition shall be verified by affidavit, and have indorsed thereon the certificate of the judge of the county court of the county in which the crime is alleged to have been committed, that the ends of justice require the return of such fugitive. Such petition shall be filed by the governor in the office of the secretary of State, to remain of record in that office.

Section 10. COPY OF INDICTMENT.] When the application is based upon an indictment found, a copy of the indictment, certified by the clerk under the seal of the court in which the indictment was found, shall be attached to the petition.

Section 11. EXPENSES.] When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the State treasury, on the certificate of the governor and warrant of the auditor; in all other cases they shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and not exceeding twelve cents per mile for all necessary travel in returning such fugitives. Before such accounts shall be certified by the governor, or paid by the county, they shall be verified by affidavit, and certified to by the judge of the county court of the county wherein the crime is alleged to have been committed.

Section 12. REWARD BY GOVERNOR.] If any person charged with, or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, shall break prison, escape or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding \$200, for apprehending and delivering such person into the custody of such sheriff or other officer as he may direct. The person so apprehending and delivering any such person as aforesaid, and producing to the governor the receipt of the sheriff or other proper officer, for the body, it shall be lawful for the governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasurer for the same.

Section 13. REWARD BY COUNTY BOARD.] It shall be lawful for the county board of any county, by an order to be entered upon its records, to fix upon a sum not exceeding \$1,000 as a reward to be paid to any person who

shall hereafter pursue and apprehend, beyond the limits of the county where the offense shall have been committed, any person guilty of any felony or other high crime, which reward shall be paid by the county where the offense was committed, on the conviction of the criminal: Provided, nevertheless, that said reward shall not disqualify the person entitled thereto from being a witness.

Section 14. EXPENSES ALLOWED BY COUNTY BOARD.] It shall be lawful for the county board of any county to enter an order upon their records, allowing to any person who shall have aided or assisted in the pursuit or arrest of any person suspected or accused of any felony, or other high crime, committed in their county, such reasonable sum as said county board shall deem just, to defray the expenses of the person in aiding or assisting in the pursuit or arrest of such offender in making such pursuit or arrest; which sum so allowed shall be paid out of the county treasury in the same manner that other county expenses are paid.

Section 15. REWARD FOR HORSE THIEF.] The county boards of the respective counties may offer rewards not exceeding \$1,000 each, for the pursuit, arrest, detection or conviction of any person guilty of stealing any horse, mare, colt, mule, ass, or neat cattle, or any other property exceeding \$50 in value.

Section 16. FUND RAISED BY TAX.] For the purpose of providing a fund for the payment of said rewards and disbursements, the said county boards are hereby authorized to levy a tax, annually, of such amounts as to them may seem necessary, for the purpose herein contemplated; said taxes to be levied and collected in the same manner as other taxes for county purposes are by law authorized to be levied and collected.

Section 17. EXPENSES—PAYMENT FROM FUND.] When any person shall pursue any person charged with felony, for whom no reward shall have been offered, or in any case where a reward has been offered and the pursuit shall be unsuccessful, the party pursuing may make out his bill for all necessary expenses, which shall not exceed

\$1 for each man per day, and present the same to the county board, and it shall be the duty of the said board to allow said account, (if satisfied of its correctness and propriety) and pay the same out of said fund: *Provided*, when a reward is paid, no expenses shall be allowed, and the expenses of more than five persons shall never be paid in the same case, and only such shall be paid, in any case, as the county board shall see fit to allow.

XII. INDIANA.

(From Burn's Annotated Indiana Statutes, 1914, Vol. 1, Chap. 4, Article 3, Sections 1893 to 1909, pages 969 to 973.)

FUGITIVES FROM JUSTICE.

1893. FROM ANOTHER STATE WARRANT.] Upon the demand of the executive authority of any State or Territory of the United States upon the governor of this State, to surrender any fugitive from justice from such State or Territory, pursuant to the constitution and laws of the United States, he shall issue his warrant, reciting the fact of such demand and the charge upon which it is based, with the time and place of the alleged commission of the offense, directed generally to any sheriff or constable of any county of this State, commanding him to apprehend such fugitive and bring him before the circuit, superior or criminal court or judge of this State nearest or most convenient of access to the place at which the arrest may be made; and such warrant may be executed by any sheriff or constable in this State, in his own county or in any other county in this State.

See *Simmons v. Vandyke*, (1894), 138 Ind. 380, 37 N. E. 973; *Morton v. Skinner*, (1874), 48 Ind. 123; *Ex parte Pfitzer*, (1867), 28 Ind. 450; *Hackney v. Welsh*, (1886), 107 Ind. 253, 8 N. E. 141; *Knox v.*

State, (1904), 164 Ind. 226, 73 N. E. 255; *Kemper v. Metzger*, (1907), 169 Ind. 112, 81 N. E. 663; *Hyland v. Rochelle*, (1913), 179 Ind. 695, 100 N. E. 842.

1894. IDENTITY OF PERSON.] The court or judge before whom such alleged fugitive shall be brought shall proceed, by the examination of witnesses, to ascertain if the person apprehended be the fugitive demanded, and mentioned in the warrant of the governor of this State; and if satisfied of the identity of the person, such court or judge shall order him to be delivered up to the agent of the State or Territory demanding him, to be transported to such State or Territory, agreeably to the laws of the United States; otherwise he shall discharge such person from custody.

See *Robinson v. Flanders*, (1867), 29 Ind. 10;

Hackney v. Welsh, (1886), 107 Ind. 253, 8 N. E. 141.

1895. COMMITMENT TO JAIL—DELIVERY TO AGENT.] If no agent of the State or Territory making the demand be present, the fugitive shall be committed to the jail of the county in which the hearing before such court or judge is had; and such court or judge shall forthwith inform the governor of this State of the fact of such commitment. And, on request by the agent of the State or Territory making the demand upon the jailor having such fugitive in custody, and upon the order of the governor of this State, such fugitive shall be delivered up to such agent, to be transported to the State or Territory from which he fled; and if such fugitive be not demanded within ten days after his commitment, the jailor shall discharge him.

1896. COSTS PAID BEFORE REMOVAL.] All costs incurred in apprehending, securing and keeping such fugitive shall be paid by the agent of the State or Territory making the demand, before he shall be permitted to receive such fugitive into custody.

1897. WARRANT REFUSED, WHEN.] If it shall be made to appear to the governor before issuing such warrant, that the alleged fugitive is held in custody or on bail to answer for any crime or misdemeanor against the

laws of this State, the governor of this State shall thereupon refuse to issue such warrant, informing the executive authority of the State or Territory making the demand of the grounds of such refusal.

1898. SURRENDER REFUSED, WHEN.] If it shall appear to the court or judge before whom such examination is had, that the alleged fugitive is held in custody or on bail for any crime or misdemeanor against the laws of this State, such court or judge shall, for that reason, refuse to make an order for the delivery of removal of such fugitive, and shall immediately report the facts to the governor of this State, who shall inform the governor of the State or Territory making the demand thereof.

1899. CITIZENS NOT SURRENDERED, WHEN.] No citizen or resident of this State shall be surrendered under pretense of being a fugitive from justice from any other State or Territory, where it shall be clearly made to appear to the court or judge holding such examination that such citizen or inhabitant was in this State at the time of the alleged commission of the offense, and not in the State or Territory from which he is pretended to have fled; and in such case, the court or judge holding such examination shall discharge the person arrested, and forthwith report the facts to the governor.

1900. WARRANTS BY JUDGE OR JUSTICE OF THE PEACE.] Whenever any person shall be found within this State charged with any offense committed in any other State or Territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor of such other State or Territory, any court, judge or justice of the peace authorized to issue warrants in criminal cases, may, upon complaint in writing on oath setting forth that a crime has been committed in such other State or Territory, that the accused has been charged in such State or Territory with the commission of such crime, and that the accused has fled from such State or Territory and is found within the (this) State, issue a warrant, directed to the sheriff or any constable of the county in which such complaint may

be filed, commanding him to apprehend such fugitive, wherever he may be found in the State, and bring him before the same, or any other court, judge or justice of the peace, who may be nearest or most convenient of access to the place at which the arrest may be made, to answer such complaint; to which warrant shall be detached a certified copy of the complaint upon which the same is issued, and upon which the examination and trial shall be had.

1901. HEARING — RECOGNIZANCE — FORFEITURE.] If, upon the examination of the person charged, it shall appear to the court, judge or justice of the peace, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor by the governor of the State or Territory where such offense is alleged to have been committed, he shall, unless such person is charged with murder or treason, and the proof is evident or the presumption is strong, recognize the accused in a bond in a reasonable sum with sufficient sureties, conditioned that the accused shall appear before such court, judge or justice at a future day, to be named therein, allowing a reasonable time to obtain the warrant of the governor, as hereinafter provided, and to abide the order of such court, judge or justice of the peace in the premises. If the person so recognized shall fail to appear according to the conditions of his recognizance, he shall be defaulted and the same proceedings shall be had as in the case of other recognizances entered into before such court, judge or justice of the peace in criminal cases.

1902. DETENTION IN JAIL.] If such person shall not enter into such recognizance, or if he shall be charged with murder or treason, and the proof is evident or the presumption strong, he shall be committed to the jail of the county in which the hearing before the court, judge or justice of the peace is had, and there detained until a future day, named in the order of commitment, allowing a reasonable length of time to obtain the warrant of the governor as herein provided.

1903. NOTICE TO GOVERNOR.] The court, judge or justice of the peace before whom the hearing is had, shall forthwith inform the governor of the fact that such person is in custody or out on bail, and it shall be the duty of the governor forthwith to notify the governor of the State or Territory where such offense is alleged to have been committed, that the fugitive is in custody or out on bail within this State.

1904. WARRANT BY GOVERNOR.] Upon the demand of the governor of the State or Territory where such offense is alleged to have been committed, for the surrender of such fugitive from justice, pursuant to the Constitution and laws of the United States, it shall be the duty of the governor to issue his warrant, as provided in section 1893, of this act, and like proceedings shall be had as if such fugitive had been originally demanded by the governor of the State or Territory where such offense is alleged to have been committed, as provided for in this act.

1905. DISCHARGE IN ABSENCE OF AGENT.] If the person so recognized shall appear before the court, judge or justice of the peace upon the day fixed in such bond, he shall be discharged unless he shall be demanded by some person authorized by the warrant of the governor to receive him: *Provided*, That whether the person so charged shall be recognized, or committed or discharged, any person authorized by the warrant of the governor may at all times take him into custody, and take him before the proper court or officer for examination, as provided in section 1893, and such arrest shall be a discharge of the recognizance if there was one given.

1906. COSTS — AFFIANT'S LIABILITY — RELEASE.] In case no agent of the State appear and demand such person within the period prescribed by this act, the person filing the affidavit upon which such person was apprehended shall be answerable for all the actual costs and charges, including the support in jail while confined, which support shall not exceed forty cents per day. In case such agent appears, and such fugitive is turned over

to him, he shall be responsible for all the costs incurred in apprehending, receiving and keeping the fugitive, and upon failure or refusal to pay the same, such fugitive shall be discharged. In case the governor of the State from which such person is a fugitive shall inform the governor of the State that he does not desire the arrest or further apprehension of such person, the governor of this State, shall at once so notify the court, judge or justice before whom such person is held for examination, who shall thereupon discharge such person from custody.

1907. PRACTICE ON EXAMINATION.] Such examination of such fugitive or fugitives as herein provided, before the court, judge or justice of the peace, shall in all respects not herein otherwise provided, be governed by the law regulating criminal cases.

1908. DAMAGES—AFFIANT'S LIABILITY.] In case such person is wrongfully held or detained under the provisions of this act, the person filing the affidavit shall be responsible in damages for any injury sustained, to be recovered as in other civil cases.

1909. EXPENSES OF AGENT—HOW PAID.] When any person has committed a crime in any county in the State of Indiana, which is punishable by imprisonment in the State's prison, and has fled to any other county, State, Territory, or country, and the governor has issued a requisition for such person or a grand jury indictment or affidavit charging said person with said crime has been filed, the judge before whom the said indictment or affidavit is filed, shall issue a warrant for the arrest of said criminal, and designate an agent in said warrant to make the arrest and return the criminal to the court, upon the request of the prosecuting attorney or his deputy for the county in which the crime was committed. The agent shall return the criminal by the shortest possible route and shall receive the following mileage: Six (6) cents for each mile of the first two hundred traveled; five (5) cents for each mile of the next three hundred (300) miles traveled, and four (4) cents for each mile of the next five hundred (500) miles and over traveled, and three

cents per mile for each mile traveled by the prisoner while in the custody of the agent. The said agent shall be reimbursed for all money legally expended to obtain possession of said criminal upon presentation of receipts covering the same together with a sworn statement by him that such items of expenditure are true and correct. Such sum shall be paid out of the county treasury of the county in which the said crime was committed upon certificate of the judge before whom said indictment or affidavit is on file, stating that the said criminal has been brought before him and arraigned and on the verified statement of said agent certified to by the said judge, filed with the auditor of the said county who shall draw his warrant therefor. And the county council shall make such appropriation as shall be necessary to carry out the provisions of this act. (As amended, Acts 1909, p. 165.)

XIII. IOWA.

(From Code of Iowa, 1897, Title 25, Chap. 9, Sections 5169 to 5181, pages 1986 to 1989.)

FUGITIVES FROM JUSTICE.

Section 5169. AGENTS APPOINTED TO APPREHEND—EXPENSES.] The governor, in any case authorized by the Constitution and laws of the United States, may appoint agents to demand of the executive authority of another State or Territory, or from the executive authority of a foreign government, any fugitive from justice charged with treason or felony, and the accounts of the agent appointed for that purpose must be audited by the auditor of State and paid out of the State treasury. The expenses to be allowed such agent shall be: fees paid the officers of the State upon whose governor the requisition is made; not exceeding ten cents per mile, each way, for

all necessary travel of himself, and, for each fugitive, five cents per mile additional for the number of miles which he shall have been conveyed. Bills for such expenses shall be made out so as to show the actual route traveled, the number of miles, be verified and accompanied by proof that the fugitive for whom requisition was made has been returned and delivered into the custody of the proper authority; but the State shall in no case pay the cost of returning the fugitive if he has not been tried, unless it is shown to the satisfaction of the governor that a failure of trial has not occurred by any fault or neglect on the part of those interested in the prosecution. (17 G. A., ch. 65; C. '73, Sec. 4171; R., Sec. 4518; C. '51. Sec. 3282.)

See *Jones v. Leonard*, (1878), 50 Iowa, 106; *State v. Kealey*, (1893), 89 Iowa 94.

Section 5170. NO OTHER COMPENSATION.] No compensation, fee or reward of any kind can be paid to or received by a public officer of the State for a service rendered or expense incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him into the State, or detaining him therein, except as provided by law; a violation of this section is a misdemeanor. (C. '73, Sec. 4172-3; R., Sec. 4519-20.)

See *Day v. Townsend*, (1886), 70 Iowa 538.

Section 5171. SWORN EVIDENCE—COPY OF INDICTMENT.] No executive warrant for the arrest and surrender of a person demanded by the executive authority of another State or Territory, as a fugitive from the justice of such State or Territory, and no requisition upon the executive authority of another State or Territory for the surrender of any person as a fugitive from the justice of this State, shall be issued, unless the requisition from the executive authority of such other State or Territory, or the application for such requisition upon the executive authority of such other State or Territory, is accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of

an indictment, preliminary information or complaint, made before the court or magistrate authorized to receive the same. (C. '73, Sec. 4174; R., 4521.)

See *Jones v. Leonard*, (1878), 50 Iowa 106.

Section 5172. REQUISITION FROM ANOTHER STATE.] Whenever a demand is made upon the governor by the executive of another State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery of a person charged in such State or Territory with a crime, if such person is not held in custody or under bail to answer for an offense against the laws of the United States or of this State, he shall issue his warrant, under the seal of the State, authorizing the agent who makes such demand, forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this State at the expense of such agent, and may also, by such warrant, require all peace officers to afford all needful assistance in the execution thereof. (C. '73, Sec. 4175 R., Sec. 4522; C. '51, Sec. 3283.)

Section 5173. COMPLAINT AND WARRANT.] If any person is found in the State charged with a crime committed in another State or Territory, and liable by the constitutions and laws of the United States to be delivered over upon the demand of the government thereof, any magistrate may, upon complaint on oath setting forth the offense, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant for the arrest of such person. (C. '73, Sec. 4176; R., Sec. 4523; C. '51, Sec. 3284.)

See *State v. Hufford*, (1869), 28 Iowa 391.

Section 5174. BAIL.] If, upon examination, it appears that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the governor, he shall, if not charged with murder, be required to enter into an undertaking, with sufficient surety in a reasonable sum, to appear before such magistrate, at a future day, allowing reasonable time to obtain the warrant from the governor, and abide

the order of such magistrate in the premises. (C. '73, Sec. 4177; R., 4524; C. '51, Sec. 3285.)

Section 5175. COMMITMENT.] If such person does not give bail, he must be committed to prison and there detained until such day in like manner as if the offense charged had been committed within the State. (C. '73, Sec. 4178; R., Sec. 4525; C. '51, Sec. 3286.)

See *State v. Hufford*, (1869), 28 Iowa 391.

Section 5176. FORFEITURE OF BAIL.] A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking is a forfeiture thereof. (C. '73, Sec. 4179; R., Sec. 4526; C. '51, Sec. 3287.)

Section 5177. DISCHARGE.] If such person appear before the magistrate upon the day ordered, he must be discharged, unless he is demanded by some person authorized by the warrant of the governor to receive him, or unless the magistrate finds good cause to commit him, or to require him to enter into a new undertaking for his appearance at some other day to await a warrant from the governor. (C. '73, Sec. 4180; R., 4527; C. '51, Sec. 3288.)

Section 5178. ARREST ON GOVERNOR'S WARRANT.] Whether the person so charged be bound to appear, be committed or discharged, any person authorized by the warrant of the governor may at any time take him into custody, and the same is a discharge of the undertaking, if there be one, unless a forfeiture thereof has been previously entered of record. (C. '73, Sec. 4181; R., Sec. 4528; C. '51, Sec. 3829.)

Section 5179. COSTS.] The complainant in any such case is answerable for all the costs **and** charges, and for the support in prison of any person so committed, and the magistrate, before issuing his warrant or hearing the cause, must require the complainant to give security for the payment of all such costs, or may require them in advance. (C. '73, Sec. 4182; R., Sec. 4529; C. '51, Sec. 3290.)

Section 5180. EXPENSES — CONDITIONS.] Upon the

application for the appointment of an agent for the arrest of a fugitive from justice under the provisions of this chapter, the governor may make the appointment and the issuance of the writ conditional that the same be executed without expense to the State. (C. '73, Sec. 4183.)

Section 5181. PAID BY STATE.] When, in the opinion of the governor, expenses incurred in the arrest of fugitives from justice should be paid by the State, the claim therefor shall be itemized and sworn to, and approved by him and at least two other members of the executive council, and when so approved, be audited and paid out of the general revenue of the State. (C. '73, Sec. 4184.)

XIV. KANSAS.

(From The General Statutes of the State of Kansas, 1909, Chapter 46, Article 4, Sections 3843 to 3866, pages 863 to 866 and Chapter 97, Article 6, Sections 6644, 6645, 6888 and 6889, pages 1432, 1433, 1468 and 1469.)

FUGITIVES FROM JUSTICE.

Section 3843. ISSUE WARRANT.] Whenever the executive of any other State or Territory shall demand from the executive of this State any person as a fugitive from justice, and shall have complied with the requisites of the act of Congress in that case made and provided, it shall be the duty of the governor of this State to issue his warrant, under the seal of the State, directed to any sheriff, coroner or other person whom he may think fit to intrust with the execution of such warrant.

Section 3844. WARRANT.] The warrant shall authorize the officer or person to whom it is directed to arrest the fugitive anywhere within the limits of this State, and convey him to any place therein named, and shall command all sheriffs, coroners, constables and other officers

to whom the warrant may be shown to aid and assist in the execution thereof.

Section 3845. EXECUTION OF.] Every warrant so issued may be executed in any part of the State; and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested by virtue thereof, as sheriffs and other officers by law have in the execution of civil or criminal process directed to them, with like penalties on those who refuse their assistance.

Section 3846. CONFINED IN JAIL.] The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant; and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route.

Section 3847. GOVERNOR MAY APPOINT AGENT TO DEMAND OFFENDER.] The governor of this State may, on application, appoint an agent to demand of the executive authority of any other State or Territory any offender fleeing from the justice of this State: *Provided*, That such application is accompanied by sworn evidence that the party charged is a fugitive from justice, and that the application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of recovering the alleged fugitive to a foreign jurisdiction, with a view there to serve him with civil process; and also by a duly attested copy of an indictment, or a duly attested copy of a complaint or information made before a court or magistrate authorized to take the same, such complaint or information to be accompanied by an affidavit to the facts constituting the offense charged, by a person or persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require.

Section 3848. BEFORE GOVERNOR SHALL DEMAND.] Be-

fore the governor of this State shall demand any fugitive from justice from the executive authority of any other State or Territory the county attorney of the county wherein the alleged crime is said to have been committed shall examine into the case, and be satisfied that a crime has been committed and that the person charged is the guilty person, he shall so certify to the governor, with a certified copy of the affidavit, information or indictment presented, and ask a requisition to be made in accordance therewith.

Section 3849. APPLICATIONS FOR REQUISITION.] Applications for requisitions on the executive authority of any other State or Territory for the surrender of fugitives from the justice of this State shall be made to conform to such rules and regulations as may be adopted and promulgated by the executive authority of this State.

Section 3850. GOVERNOR DELIVER OFFENDER.] The governor in this State, in any case authorized by the Constitution of the United States and the acts of Congress made in pursuance thereof, may on demand deliver over to the executive authority of any other State or Territory any person charged therein with treason, felony, or other crime committed therein: *Provided*, That such demand or application is accompanied by a duly attested copy of an indictment, or a duly attested copy of a complaint or information, certified as authentic, and also by sworn evidence that the demand is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction, with a view there to serve him or her with civil process.

Section 3851. OFFICER.] The sheriff or other officer to whom shall be intrusted the execution of warrant issued by the governor of this State shall proceed forthwith to arrest the fugitive therein named, and on payment of all costs by the duly authorized agent of the executive authority making the demand, such fugitive shall be delivered to him, to be thence removed to the proper

place for prosecution: *Provided*, That if the agent of the executive authority as aforesaid does not appear within thirty days from the date of the arrest so made, the sheriff shall discharge the person imprisoned; and all costs and expenses, being first ascertained to the satisfaction of the executive shall on his certificate be allowed and paid out of the State treasury.

Section 3852. FUGITIVE FROM OTHER STATE.] When any person within this State shall be charged on the oath or affirmation of any credible witness, before any judge or justice of a court of record or a justice of the peace, with the commission of any crime in any other State or Territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged.

Section 3853. ON EXAMINATION; BAIL.] If upon examination it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to jail of the county; or, if the offense is bailable, take bail for his appearance at the next term of the district court in the county.

Section 3854. EXAMINATION, HOW CONDUCTED.] The judge or justice shall proceed in the examination in the same manner as is required when a person is brought before such officer charged with an offense against the laws of this State, and shall reduce the examination to writing and make return thereof as in other cases, and shall also send a copy of the examination and proceedings to the governor of this State without delay.

Section 3855. DUTY OF GOVERNOR.] If in the opinion of the governor the examination contains sufficient evidence to warrant the finding an indictment, he shall forthwith notify the executive of the State or Territory in which the crime is alleged to have been committed, of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of an indictment to accompany the demand.

Section 3856. OFFENDER DELIVERED UP.] When a demand shall be made for the offender, the governor shall

forthwith issue his warrant, under the seal of the State, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the State.

Section 3857. **ARRESTED.]** If the accused shall be at large; on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith anywhere within the State, and to surrender him agreeably to the command of the warrant.

Section 3858. **DISCHARGE AND RECOGNIZANCE.]** In all cases where the party shall have been admitted to bail and shall appear according to the condition of his recognizance, and he shall not have been demanded, the district court may discharge the recognizance or continue it, according to the circumstances of the case, such as distance of the place where the offense is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

Section 3859. **NOT KEPT BEYOND.]** In no case shall the party be kept in prison or held to bail beyond the end of the second term of the district court after the arrest; and if no demand is made for him within that time, he shall be discharged.

Section 3860. **FORFEITED RECOGNIZANCE.]** When any such recognizance shall be forfeited, it shall inure to the benefit of the State.

Section 3861. **BOND AND SECURITY.]** When a complaint shall be made against any person, as provided by this act, the judge or justice shall take from the prosecutor a bond to the clerk of the district court, with sufficient security to secure the payment of the costs and expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned, with the examination, to the office of the clerk of the district court.

Section 3862. **HOW COLLECTED.]** Upon the determination of the proceedings in that court, the clerk may issue fee bills, which shall be served on the principal se-

curities in the bond by the sheriff, in the same manner as other fee bills; for which service the sheriff shall be allowed the same fees as for serving notices.

Section 3863. EXECUTION.] If the costs and charges are not paid on or before the first day of the next term of the district court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee bills were served.

Section 3864. SUE ON BOND.] Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond for the recovery of the costs and charges.

Section 3865. NOT TAKE FROM STATE.] No person shall take or remove any fugitive from this State, or do any act toward such removal, unless authorized to do so pursuant to the provisions of this act; and any person violating the provisions of this section shall forfeit and pay to the aggrieved party a sum not less than five hundred dollars.

Section 3866. BAIL.] Whenever any person shall have been committed to the jail of any county upon examination for a bailable offense, under the provisions of this act, he may be let to bail with sufficient surety for his appearance at the next term of the court of the county having criminal jurisdiction, such bail to be taken and approved by the court, or judge of the court, having criminal jurisdiction or the probate judge.

Section 6644. NO INFORMATION SHALL BE FILED.] No information shall be filed against any person for any felony until such person shall have had a preliminary examination therefor as provided by law before a justice of the peace or other examining magistrate or officer, unless such person shall waive his right to such examination: *Provided*, however, That informations may be filed without such examination against fugitives from justice, and in misdemeanor cases not cognizable before justices of the peace. Where proceedings are commenced originally by information in the district court, the clerk of the court during vacation shall issue a war-

rant, naming the offense charged to have been committed and the county in which it was committed, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the judge or the clerk of said court to be admitted to bail for his appearance at the next term of the court to be held in said county. In case the defendant should fail to give bond for such appearance in such sum as in the opinion of the judge or the clerk will secure the appearance of the person charged with the offense at the court where such person is to be tried, the prisoner shall be committed for trial, and there shall be indorsed upon the order of commitment the sum in which bail is required.

Section 6645. FUGITIVE.] Any fugitive from justice against whom an information may be filed may be demanded by the governor of this State of the executive authority of any other State or Territory, or of any foreign government, in the same manner, and the same proceedings may be had thereon, as provided by law in like cases of demand upon indictment found.

Section 6888. FUGITIVE FROM JUSTICE.] Before the governor of this State shall demand any fugitive from justice from the executive of any other State or Territory, the county attorney of the county where the crime is alleged to have been committed shall examine into the case, and if satisfied that a crime has been committed, and that the person charged is the guilty person, he shall so certify to the governor upon the affidavit, information or indictment presented, and ask a requisition to be made in accordance therewith; and the governor may issue his warrant, under the seal of the State, directed to the agent or messenger recommended by the said county attorney, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed or is by law cognizable.

Section 6889. EXPENSES.] The expenses which may accrue under the preceding section shall be paid by the county where the offense was committed, except in capital cases which in the opinion of the governor demand

prompt and immediate action; and when a delay in procuring the necessary papers from the county attorney, as heretofore provided, would operate to prevent the apprehension of the criminal, then in such cases the expenses shall be paid by the State.

XV. KENTUCKY.

(From Carroll's Kentucky Statutes, (1915), Vol. 1, Chap. 56, Sections 1926 to 1931, Bottom paging 1012 to 1013.)

FUGITIVES FROM JUSTICE.

Section 1926. GOVERNOR TO ISSUE WARRANT ON DEMAND OF FOREIGN EXECUTIVE.] Upon the demand of the executive of any State or Territory of the United States, made upon the governor of this Commonwealth, to surrender a fugitive from justice from said State or Territory, pursuant to the Constitution and laws of the United States, he shall issue his warrant to the sheriff or constable of any county within this Commonwealth, commanding him to apprehend said fugitive and bring him before some circuit judge.

Section 1927. CIRCUIT JUDGE UPON IDENTIFICATION, TO ORDER DELIVERY TO AGENT.] The circuit judge shall proceed, by the examination of witnesses, to ascertain if the person apprehended be the fugitive demanded and mentioned in the warrant of the governor of this State, and if satisfied of the identity of the person, the judge shall order him to be delivered up to the agent of the State or Territory demanding him, to be transported to such State or Territory agreeably to the laws of the United States; otherwise he shall discharge the person from custody.

Section 1928. PROCEEDINGS WHEN NO AGENT PRESENT—NOTICE TO GOVERNOR—DISCHARGE.] If no such agent be present, the fugitive shall be committed to the jail of

the county in which the hearing before the judge is had. Of the fact of commitment the judge shall forthwith inform the governor of this State, and, on demand of the agent of the State or Territory upon the jailer, by the authority of the governor of this Commonwealth, the fugitive from justice shall be delivered up to such agent. If said fugitive be not demanded within three months after his commitment, the jailer shall discharge him.

Section 1929. COSTS TO BE PAID BY AGENT.] All costs incurred in apprehending and securing said fugitive shall be paid by the agent of the State or Territory, before he shall be permitted to remove him or receive him into custody.

Section 1930. PERSONS GUILTY OF FELONY ARRESTED—WARRANT—DUTY OF PERSON ARRESTING AND PERSON CAUSING ARREST.] A person guilty of felony anywhere in the United States, if found in this State, may be arrested and confined in jail, and delivered over to the proper authority, in the following manner:

1. A warrant issued by any judicial authority, upon affidavit made of the facts, shall authorize his arrest by any ministerial officer, or other person, to whom it may be directed by name.

2. The person arresting the accused shall immediately take him before the circuit judge, the judge of the county court or the police judge of a city, in the county in which he was arrested, who shall, upon hearing the evidence, if satisfied of the guilt of the prisoner, commit him to the jail of the county, where he was arrested, there to remain sixty days, unless he be legally discharged, or removed upon demand of the executive of the State or Territory in which it is charged that the offense was committed.

3. It shall be the duty of the person who caused the arrest of such fugitive to be made, to notify the executive of the State or Territory in which the crime was committed.

See *Botts v. Williams*, (1856), 56 Ky. (17 B. Mon.)

687, and *Ex parte Knowles*, (1894), 16 Ky. Law Rep. 263.

Section 1931. The governor of this Commonwealth, upon a proper demand, shall issue his warrant directing the officer having the custody of the prisoner to deliver him to the agent of the State or Territory demanding him, whose duty it shall be to deliver over such prisoner, upon the payment of all legal costs and charges by said agent or other person.

XVI. LOUISIANA.

(From Marr's Revision of the Statutes of Louisiana, 1915, Sections 2259 to 2264, pages 738 to 740.)

2259. ARREST OF FUGITIVE FROM ANOTHER STATE.] When any person shall be charged on oath of any credible person, before any judge or justice of the peace of this State, with having committed any crime within any State or Territory of the United States, and has fled from justice, it shall be the duty of such judge or justice to issue his warrant for the arrest of such accused, and to proceed to the examination of such case, and commit or discharge the accused, as such judge or justice may determine, provided no person so accused shall be detained in custody exceeding ninety days.

2260. DELIVERY OF FUGITIVE.] The Governor may in his discretion deliver over to justice any person found within the State who shall be charged with having committed any crime under the Constitution and laws of the United States or of any State or Territory.

2261. *Id.*] Such delivery shall only be made on the requisition of the duly authorized ministers or officers of the government within the jurisdiction of which the crime shall be charged to have been committed, and upon their paying all expenses attending the apprehension, confinement and delivery of the party accused.

2262. EVIDENCE WARRANTING DELIVERY.] It shall be the duty of the governor to require such evidence of the guilt of the persons so charged as would be necessary to justify his apprehension and commitment for trial had the crime charged been committed within the State.

2263. REQUISITION FOR LOUISIANA FUGITIVE.] Whenever a demand has been made by the executive of this State on the executive of any other State or Territory for the arrest of any person as a fugitive from justice for crime committed in this State, according to the authority vested in the executive of the States by the Constitution and laws of the United States, it shall be the duty of the sheriff of the parish in which the crime is charged to have been committed to present such demand to the executive of the State or Territory on which it may be made, or the executive of this State may appoint some suitable person to present such demand, and when the executive of such State or Territory, on which such demand has been made, shall have caused such fugitive from justice to be arrested and secured, said sheriff or such person appointed by the executive of this State to receive such fugitive from justice shall convey him to and deliver him within the four walls of the jail of the parish in which he is charged to have committed the offense, to the sheriff of such parish unless it be the sheriff himself who receives the prisoner, who shall keep him confined in jail until delivered according to law. That all the actual expenses incurred by the sheriff or other person appointed by the executive to receive and convey a fugitive from justice as provided by law and this act, together with five dollars per day for all necessary time employed in such service shall be paid by the parish in which the offense is charged to have been committed; that no part of said expenses and *per diem* shall be paid unless such fugitive is actually received and conveyed to and confined in the jail of the parish in which the crime is charged to have been committed, or unless such fugitive has been discharged or admitted to bail by some competent authority in this State; and provided further

an explicit bill of each item of such expenses, with the receipt therefor, if a receipt can be obtained, including the fees and charges of making the arrest in the State to which such fugitives had fled, must be made out, together with the number of days such sheriff or party has been actually employed in such service, which shall be sworn to as being correct in every item; which bill shall be presented to the police jury of such parish, and after having the same carefully examined and they shall find the same correct, they shall allow the same and provide for its payment; but if they should fail or refuse to allow such amount, then the claimant shall have the right to sue the parish therefor, and the case may, if demanded by either party, be tried by a jury.

2264. DUTY OF DISTRICT ATTORNEY.] In all cases in which the district attorney shall have reason to believe that a person charged with a crime committed in their district or parish, and has fled into any other State or Territory, it shall be his duty to obtain a requisition from the governor of this State for his apprehension and delivery on the governor of any other State or Territory to which such criminal may have fled, and to deliver such requisition to the sheriff, who shall proceed to cause the same to be executed according to law; any failure or refusal of the sheriff to comply with the requirements of this section shall be considered a contempt of the court, and shall upon being brought to the attention of the court by any person, subject such sheriff to be punished as for a contempt of court.

XVII. MAINE.

(From the Revised Statutes of the State of Maine, 1904, Chapter 139, Sections 7 to 13, pages 981 and 982.)

FUGITIVES FROM JUSTICE IN THIS STATE.

Section 7. In any case, authorized by the constitution and laws of the United States, the governor may appoint

an agent to demand and receive of the executive authority of any other State, any fugitive from justice charged with any crime in this State; and the accounts of such agent shall be audited and paid from the treasury by order of the governor and council.

Section 8. Whenever a prisoner convicted of, or charged with, a capital crime or other high offense, escapes from prison in this State; or there is reasonable cause to believe that a person who is charged with such offense and has not been apprehended therefor, cannot be arrested and secured in the ordinary course of proceedings, the governor may, upon application in writing, of the attorney general or county attorney for the county in which such offense was committed, and upon such terms and conditions as he deems expedient and proper, offer a suitable reward, not exceeding one thousand dollars, for the arrest, return and delivery into custody of such escaped prisoner or fugitive from justice; and upon satisfactory proof that the terms and conditions of such offer have been complied with, he may, with the advice and consent of the council, draw his warrant upon the treasurer for the payment thereof.

FUGITIVES FROM JUSTICE IN OTHER STATES.

Section 9. When such demand as is mentioned in section seven is made on the governor of this State, and he is satisfied, on examination of the grounds thereof, that it is according to law and ought to be granted, he shall issue his warrant, under the seal of the State, authorizing the agent making the demand, at his own expense, to take and transport such fugitive to the line of the State at the time designated in the warrant, and shall therein require the civil officers of the State to afford all needful aid in its execution.

Section 10. When such fugitive from justice in another State is found in this State, any court or magistrate authorized to issue warrants in criminal cases, may, on complaint under oath, setting forth the offense and

other facts necessary to bring the case within the provisions of law, grant a warrant and have the accused arrested for examination as in other cases.

Section 11. On such examination, if the court or magistrate believes that the complaint is true, and that the accused can lawfully be demanded of the governor, the case shall be adjourned long enough to obtain an executive warrant; and if the offense is bailable, the accused may recognize with sufficient sureties to appear at the adjournment; and if he does not so recognize, or the offense is not bailable, he shall be committed; and if any such recognizance is forfeited, the same proceedings shall be had as in case of other recognizances.

Section 12. If the accused appears at the adjournment, he shall be discharged, unless some person is authorized to receive him by an executive warrant, or another adjournment is ordered for sufficient cause, and in that case the same proceedings shall be had as at the first adjournment; but nothing in this, or the two preceding sections, shall prevent the arrest of any accused by an executive warrant, and such arrest discharges any such existing recognizance.

Section 13. The complainant is answerable in all such cases for the actual costs and charges and the support in prison of the accused when committed, to be paid as a creditor pays for his debtor committed on execution; and if his support in prison is not so paid, the jailer may discharge the accused as if he were committed on execution for debt.

XVIII. MARYLAND.

(From the Public General Laws of Maryland, 1914, Vol. 3, Article 27, Section 212, page 378.)

FUGITIVE CONVICTS.

212. Any person who has been convicted and condemned to serve and labor as a criminal, and who may

escape and be found in this State, shall be deemed a fugitive felon, and being thereof convicted by a duly authenticated record from the court of the State in which such conviction and condemnation took place, shall be sentenced to undergo a confinement in the penitentiary of this State, for and during the residue of the term for which such person shall have been condemned; but if such person shall be demanded by the State whence he escaped, he shall be immediately delivered up agreeably to such demand.

XIX. MASSACHUSETTS.

(From the Revised Laws of the Commonwealth of Massachusetts, 1902, Vol. 2, Chap. 217, Sections 11 to 20, pages 1821 to 1823.)

FUGITIVES FROM JUSTICE.

11. The governor, in any case which is authorized by the Constitution and laws of the United States, may, upon demand, deliver to the executive of any other State or Territory any person charged therein with treason, felony or other crime; or may, upon application, appoint an agent to demand of the executive authority of any other State or Territory any such offender fleeing from the justice of this commonwealth. Such demand or application shall be accompanied by sworn evidence that the person charged is a fugitive from justice and by a duly attested copy of an indictment or complaint made before a court or magistrate authorized to receive it. Such complaint shall be accompanied by affidavits to the facts constituting the crime charged by persons who have actual knowledge thereof, and by such further evidence as the governor may require.

See *Commonwealth v. Wright*, (1893), 158 Mass. 149, 33 N. E. 82.

12. Upon such demand or application, the attorney general or a district attorney, shall, if the governor so requires, forthwith investigate the grounds thereof and report to the governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, and, in case of a person demanded, whether he is held in custody or is under recognizance to answer for a crime against the laws of this commonwealth or of the United States or by force of any civil process, with an opinion as to the legality or expediency of complying therewith.

13. If the governor is satisfied that the demand conforms to law and ought to be complied with, he shall issue his warrant, under the seal of the commonwealth, to an officer authorized to serve warrants in criminal cases, directing him at the expense of the agent who makes the demand, at a time designated in the warrant, to take and transport such person to the boundary line of this commonwealth and there deliver him to such agent. Such officer may require aid as in criminal cases.

14. A person who is arrested upon such warrant shall not be delivered to such agent of a State or Territory until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer who makes the arrest. If such writ is applied for, notice thereof and of the time and place of hearing shall be given to the attorney general or district attorney for the district in which the arrest is made. An officer who delivers a person in his custody upon such warrant to such agent for extradition without having complied with the provisions of this section shall forfeit not more than one thousand dollars.

15. If the application for the arrest of a fugitive from the justice of the commonwealth is complied with and an agent is appointed, his account shall be paid like other expenses in criminal cases by the county in which the proceedings are pending; but the governor may direct the

whole or a part of such account to be paid by the commonwealth.

16. If a person who is found in this commonwealth is charged with a crime committed in another State or Territory and is liable by the Constitution and laws of the United States to be delivered upon the demand of the executive of such other State or Territory, a court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath setting forth the crime and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person charged before the same or another court or magistrate within the commonwealth to answer to such complaint as in other cases.

17. If, upon examination of the person charged, the court or magistrate has reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the executive, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties in a reasonable sum to appear before such court or magistrate at a day appointed, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate.

18. If he does not so recognize, he shall be committed to jail until such day, as if the crime charged had been committed within the commonwealth; and if he fails to appear according to the condition of his recognizance, he shall be defaulted and like proceedings shall be had as in case of other recognizances entered into before such court or magistrate. If he is charged with a capital crime, he shall be committed to jail until the day so appointed for his appearance.

19. If the person so recognized or committed appears before the court or magistrate upon the day appointed, he shall be discharged unless he is demanded by a person authorized by the warrant of the executive to receive him, or unless the court or magistrate has cause to commit him or to require him to recognize anew for his appearance on another day, and if, when ordered, he does

not so recognize, he shall be committed and detained as before. If the person charged has recognized or is committed or discharged, a person authorized by the warrant of the executive may at any time take him into custody and the same shall be a discharge of the recognizance and not be an escape.

20. The complainant in such case shall be answerable for all actual costs and charges and for the support in jail of a person so committed, which shall be paid as by a creditor for his debtor committed on execution. If the charge for support in jail is not so paid, the jailer may discharge him as if he had been committed on execution.

XX. MICHIGAN.

(From Howell's Statutes of the State of Michigan, 1913, Vol. 5, Title XL., Chap. 423, Sections 15215 to 15222, pages 5834 to 5837.)

15215. GOVERNOR MAY APPOINT AGENTS TO DEMAND FUGITIVES OF FOREIGN GOVERNMENTS.] The governor of this State may, in any case authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any other State or Territory, or from the executive authority of any foreign government, any fugitive from justice, or any person charged with treason; and the accounts of the agents appointed for that purpose, shall, unless otherwise directed by the governor, be audited by the auditor general, and paid out of the state treasury.

15216. DUTY OF GOVERNOR WHEN DEMAND MADE FOR FUGITIVE—SHERIFF TO ARREST AND DELIVER TO AGENT—OPPORTUNITY FOR JUDICIAL EXAMINATION BEFORE DELIVERY TO AGENT—DUTY OF ATTORNEY GENERAL.] Whenever a demand shall be made upon the governor of this State by the governor of any other State or Territory in any case authorized by the Constitution and laws of the United

States for the delivery over of any person charged in such State or Territory with treason, felony or any other crime and there shall be produced with such demand a copy of the indictment found or information filed, or affidavit, or complaint made before a magistrate of the State or Territory demanding, charging the person so demanded with having committed treason, felony, or other crime within such State or Territory, duly certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged fled, with due proof of the fleeing, it shall be the duty of the governor of this State to issue an order or warrant to the sheriff of the county in which such person so charged may be found, commanding him to forthwith arrest such alleged fugitive and to deliver him to the duly authorized agent appointed by the executive authority making such demand to receive him and remove him to the proper place for prosecution. But the said sheriff while the alleged fugitive is in his custody, and before delivering him up to the agent of the demanding State, shall afford him every proper facility to enable him to have a judicial examination if he desires it, by *habeas corpus*, or otherwise, to ascertain whether the demand and arrest have been made conformably to the requirements of law, so that such person if he ought not to be delivered up may be duly discharged, and the attorney general when required by the governor shall forthwith investigate the grounds of demand, and report to the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody, or is under recognizance to answer for any offense against the laws of this State, or of the United States, or by virtue of any civil process, and also whether such demand was made conformably to law, so that such person ought to be delivered up.

15217. SAME.] If the governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of

the State, authorizing the agents who make such demands, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this State, at the expense of such agents, and shall also by such warrant require the civil officers within this State, to afford all needful assistance in the execution thereof.

15218. PERSONS WHO MAY BE DEMANDED BY OTHER STATES, MAY BE ARRESTED.] Whenever any person shall be found within this State, charged with any offense committed in any other State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of such other State or Territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint on oath, setting forth the offense, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within this State, to answer to such complaint as in other cases.

15219. REQUIRED TO RECOGNIZE, ETC.] If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, or with murder in the first degree, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the governor, and to abide the order of such court or magistrate in the premises.

15220. REFUSING TO RECOGNIZE, FAILURE TO APPEAR, ETC.] If such person shall not recognize, or if he shall be charged with a capital crime, or with the crime of murder in the first degree, he shall be committed to prison, and there detained until such day, in like manner as if the offense charged had been committed within this State; and, if the person so recognizing shall fail to ap-

pear according to the condition of his recognizance, he shall be defaulted, and the same proceedings shall be had as in the case of other recognizances entered before such court or magistrate.

15221. HOW TO BE PROCEEDED WITH.] If the person so recognized or committed, shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before: *Provided*, that whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the governor, may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

15222. EXPENSES, HOW PAID.] The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed to be paid weekly, or otherwise, as may be ordered by the court or magistrate; and, if the charge for his support in prison shall not be so paid, the jailer may, on the failure of the complainant, discharge such person from his imprisonment.

XXI. MINNESOTA.

(From the General Statutes of Minnesota, (1913), Chapter 104, Sections 9037 to 9043, pages 1986 to 1989.)

EXTRADITION.

9037. EXTRADITION — AGENTS — APPOINTMENT — REPORTS, ETC.] In every case authorized by the Constitution and laws of the United States, the governor may appoint an agent, who shall be the sheriff of the county

from which the application for extradition shall come, when he can act, to demand of the executive authority of any State or Territory any fugitive from justice or any person charged with a felony or other crime in this State; and whenever an application shall be made to the governor for that purpose, the attorney general, when so required by him, shall forthwith investigate or cause to be investigated by any county attorney the grounds of such application, and report to the governor all material circumstances which shall come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand. The accounts of agent so appointed shall in each case be audited by the county board of the county wherein the crime upon which extradition proceedings are based shall be alleged to have been committed, and every such agent shall receive from the treasury of such county four dollars for each calendar day, and the necessary expenses incurred by him in the performance of such duties.

9038. WARRANT OF EXTRADITION, SERVICE, ETC.] Whenever a demand shall be made upon the governor by the executive of any State in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State with treason, felony, or other crime, the attorney general, when required by the governor, shall forthwith investigate or cause to be investigated by any county attorney the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially whether he is held in custody or under recognizance to answer for any offense against the laws of this State or of the United States, and also whether such demand is made according to law, so that such person ought to be delivered up; and if notified that such demand is conformable to law, and ought to be complied with, the governor shall issue his warrant under the seal of the State, authorizing the sheriff or some other designated person of any county in the State, either

forthwith, or at a time designated in such warrant, to take and transport the person so demanded to the line of this State, at the expense of the State in whose name such person has been demanded, and therē deliver him to the agent of the State making such demand, and shall also by such warrant require the civil officers in this State to afford all needful assistance in the execution thereof. Upon receipt of such warrant, such officer may arrest and retain in his custody the person whose surrender is demanded; but no person arrested on such warrant shall be delivered to the agent designated therein, or to any other person, until he shall have been notified of the demand made for his surrender, and of the nature of the criminal charge made against him, nor until he has had an opportunity to apply for a writ of *habeas corpus*, if he shall claim such right of the officer making the arrest. Whenever such writ shall be applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the attorney general or the county attorney of the county in which the arrest is made. Every sheriff or other officer making such arrest, who shall deliver over to the agent named in such warrant, or to any other person for extradition, the person so in his custody under such warrant, without having complied with the provisions of this subdivision, shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars, or by both.

9039. FUGITIVE FROM ANOTHER STATE ARRESTED, WHEN.] Whenever any person shall be found in this State charged with any offense committed in any State, and liable under the Constitution and laws of the United States to be delivered over upon the demand of the executive of such State any court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath, setting forth the offense and such other matters as shall be necessary to bring the case within the provisions of law, issue a warrant to bring such person

before him or some other court or magistrate in the county where he is found.

9040. MAY GIVE RECOGNIZANCE, WHEN.] If, upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, if the offense is bailable he shall be required to recognize, with sufficient sureties in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize he shall be committed to prison, and there detained until such day, in like manner as if the offense charged had been committed within this State. If he shall fail to appear according to the condition of his recognizance, he shall be defaulted, and like proceedings had as in case of default in other recognizances, but if the offense be not bailable, he shall be committed to prison, and there detained until the day so appointed for his appearance.

9041. DISCHARGED, WHEN.] If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged unless he shall be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance on some other day, and if when so ordered he shall not so recognize he shall be committed and detained as provided in (Section 9040). Whenever the person so discharged shall be recognized, committed, or discharged, any person authorized by the warrant of the executive may at any time take him into custody, and the same shall be a discharge of the recognizance, if any, and not an escape.

9042. COMPLAINANT LIABLE FOR EXPENSES.] The complainant in every such case shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and at the time of commitment

shall advance to the jailer one week's board, and so from week to week, so long as he shall remain in jail, and on the failure so to do the jailer may forthwith discharge any such person from custody.

9043. CONVEYING PRISONERS THROUGH STATE.] Any person who has been or shall be convicted of or charged with a crime in any other State, and who shall be lawfully in the custody of any officer of the State where such offense is claimed to have been committed, may be by said officer conveyed through or from this State, for which purpose such officer shall have all the powers in regard to his control or custody that an officer of this State has over a prisoner in his charge.

XXII. MISSISSIPPI.

(From the Mississippi Code of 1906, Chap. 49, section 2212, and chapter 60, sections 2378 to 2381, pages 724 and 725.)

2212. TO PERSON BRINGING BACK PRISONER ON EXTRA-DITION.] (Laws 1884, p. 75.) Any party, acting under a requisition of the governor, who brings back to this State and delivers to the sheriff of the county where the offense is alleged to have been committed, a person charged with felony, shall receive, to be paid out of the county treasury on the order of the circuit court and of the board of supervisors, twenty cents a mile for the distance necessarily traveled in coming from the place of arrest to the place of delivery; but the same shall not be paid to any party who has received, or who claims a reward from the State, county, or person.

2378. ARREST AND DELIVERY OF FUGITIVES FROM JUSTICE.] It shall be the duty of the governor, on demand made by the executive authority of any other State, Territory, or district, for any person charged, on affidavit or indictment, in such other State, Territory, or district, with a criminal offense, and who shall have fled from

justice, and be found in this State, the demand being accompanied with a copy of the affidavit or indictment, certified as authentic by such executive authority, to cause the offender to be arrested and delivered up to the authority of such State, Territory, or district, for removal to the jurisdiction having cognizance of the offense, upon payment of the costs and expenses consequent on arrest; and it shall be the duty of the governor to demand and receive fugitives from justice for offenses committed in this State.

2379. DUTY TO NOTIFY EXECUTIVE OF OTHER STATE IN CERTAIN CASE.] Upon being informed by any conservator of the peace of the commitment, or admission to bail, of any person in this State charged with treason, felony, or other crime in some other State or Territory, the governor shall forthwith communicate the information to the executive of the State or Territory in which the offense is charged to have been committed.

2380. REWARDS FOR ABSCONDING CRIMINALS.] Whenever the governor shall be of opinion that the public good requires it, he is authorized to offer, by proclamation or in such other manner as he may deem advisable, such reward as he may think the nature of the case requires, not exceeding two thousand dollars, for the apprehension and arrest of any person who has committed any atrocious offense against the criminal laws, to be paid in no instance until the offender is delivered to the civil authority of the county where the offense was committed, and confined in jail or admitted to bail; or the reward may be conditioned to be paid only upon conviction.

2381. AGENT TO BRING ABSCONDING OFFENDER FROM OTHER STATES, ETC.] The governor may appoint an agent to demand of the executive authority of any other State or Territory any fugitive from justice or other person charged with treason, felony, or other crime in this State. Such agent, if necessary, may employ a sufficient guard or escort to bring such criminal to this State; and the governor may contract other expenses absolutely required in performing the duties of the agency.

XXIII. MISSOURI.

(From the Revised Statutes of Missouri, 1909, Vol. 2, Article 9, Sections 5137 to 5159, pages 1644 to 1647.)

EXTRADITION AND FUGITIVES FROM JUSTICE.

Section 5137. MESSENGER, WHEN TO BE APPOINTED.] Whenever the governor of this State shall demand a fugitive from justice from the executive authority of another State or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable.

Section 5138. EXPENSES UNDER PRECEDING SECTION, HOW PAID.] The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the State treasury, as other demands against the State.

Section 5139. REWARD.] If any person charged with or convicted of a felony shall break prison, escape or flee from justice, and abscond or secrete himself, the governor of the State may, if he deems it expedient, offer any reward, not exceeding three hundred dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer, as he may direct.

Section 5140. CAPTOR OF FUGITIVE, HOW PAID.] When any person shall apprehend and deliver such fugitive to the proper officer or sheriff, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the State auditor, who shall draw on the treasury for the same.

Section 5141. GOVERNOR TO ISSUE WARRANT, WHEN.] Whenever the executive of any other State shall demand of the executive of this State any person as a fugitive

from justice, and shall have complied with the requisites of the act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant, under the seal of the State, directed to any sheriff, coroner or other person whom he may think fit to intrust with the execution thereof.

Section 5142. WARRANT TO GIVE WHAT AUTHORITY.] The warrant shall authorize the officer or person to whom it is directed, to arrest the fugitive anywhere within the State and convey him any place therein named, and shall command all sheriffs, coroners, constables and other officers to whom the warrant may be shown, to aid and assist in the execution thereof.

Section 5143. WHERE AND HOW EXECUTED.] Every warrant so issued may be executed in any part of the State, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested by virtue thereof, as sheriffs and other officers, by law, have in the execution of civil and criminal processes directed to them, with like penalties on those who refuse their assistance.

Section 5144. POWER AND DUTY OF OFFICER ARRESTING.] The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass, in conveying such prisoner to the place commanded in the warrant; and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route.

Section 5145. EXPENSES, HOW PAID.] The expenses which may accrue under the foregoing sections of this chapter shall be paid by the State or Territory making the demand of such fugitive from justice.

Section 5146. JUDGE OR JUSTICE MAY ISSUE WARRANT, WHEN.] Whenever any person within this State shall be charged, on the oath or affirmation of any credible witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any

crime in any other State or Territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged.

In construing this section the supreme court of the State of Missouri in the case of *State v. Harvell*, (1886), 89 Mo. 588, it was declared that one who commits an offense and conceals himself so as to avoid arrest, is a fugitive from justice. If he successfully hides or conceals himself so as to evade punishment for his crime, although such concealment may be upon his own premises, he is as much a fugitive as if he had escaped into Canada. The same court in a construction of the same section, in *State v. Swope*, (1880), 72 Mo. 402, said: "It will be readily seen that in order for the magistrate to acquire jurisdiction under the statute just quoted, (section 5146,) three things are absolutely essential: First, that there is a person within this State. Second, that a credible witness before such magistrate, on oath or affirmation, charged such person with the commission of a crime in another State. And third, that such person fled from justice. It is only whenever all these essentials occur, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged."

Section 5147. ON EXAMINATION, PARTY MAY BE COMMITTED.] If, upon examination, it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to the jail of the county; or if the offense is bailable, take bail for his appearance at the next term of the court of the county having criminal jurisdiction.

Section 5148. PROCEEDINGS ON EXAMINATION.] The judge or justice shall proceed in the examination in the same manner as is required when a person is brought before such officer, charged with an offense against the laws of this State, and shall reduce the examination to

writing and make return thereof as in other cases, and shall, also, send a copy of the examination and proceedings to the governor of this State without delay.

Section 5149. DUTY OF THE GOVERNOR.] If, in the opinion of the governor, the examination contains sufficient evidence to warrant the finding of an indictment, he shall forthwith notify the executive of the State or Territory in which the crime is alleged to have been committed, of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of an indictment to accompany the demand.

Section 5150. OFFENDER TO BE DELIVERED ON DEMAND.] Where a demand shall be made for the offender, the governor shall forthwith issue his warrant, under the seal of the State, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the State.

Section 5151. IF AT LARGE ON BAIL, SHERIFF AUTHORIZED TO TAKE HIM.] If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State, and to surrender him agreeably to the command of the warrant.

Section 5152. CIRCUIT COURT MAY DISCHARGE.] In all cases where the party shall have been admitted to bail and shall appear, according to the condition of his recognizance, and he shall not have been demanded, the court may discharge the recognizance or continue it, according to the circumstances of the case, such as distance of the place where the offense is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

Section 5153. LIMITATION OF IMPRISONMENT.] In no case shall the party be kept in prison or held to bail beyond the end of the second term of the court after the arrest, and if no demand is made for him within that time, he shall be discharged.

Section 5154. **RECOGNIZANCE TO INURE TO STATE.]** When any recognizance shall be forfeited, it shall inure to the benefit of the State.

Section 5155. **SECURITY FOR COSTS.]** When a complaint shall be made against any person, as provided by this chapter, the judge or justice shall take from the prosecutor a bond to the clerk of the court, with sufficient security to secure the payment of the costs and expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned, with the examination, to the office of the clerk of the court having criminal jurisdiction.

Section 5156. **COSTS, HOW COLLECTED.]** Upon the determination of the proceedings in that court the clerk may issue fee bills, which shall be served on the principal and securities in the bond by the sheriff in the same manner as other fee bills, for which service the sheriff shall be allowed the same fees as for serving notices.

Section 5157. **IF NOT PAID, EXECUTION TO ISSUE, WHEN.]** If the costs and charges are not paid on or before the first day of the next term of the court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee bills were served.

Section 5158. **PRECEDING SECTIONS CONSTRUED.]** Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond for the recovery of the costs and charges.

Section 5159. **BAIL MAY BE TAKEN.]** Whenever any person shall have been committed to the jail of the county upon examination for a bailable offense, under the provisions of this chapter, he may be let to bail with sufficient security for his appearance at the next term of the court of the county having criminal jurisdiction, by the court or judge of the court having criminal jurisdiction, or by any judge or justice of the county court.

XXIV. MONTANA.

(From the Revised Code of Montana, (1907), Vol. 2, Chap. IV, Sections 9700 to 9710, bottom paging 886 to 888.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 9700. (Sec. 2853.) FUGITIVES FROM ANOTHER STATE, WHEN TO BE DELIVERED UP.] A person charged in any State of the United States with treason, felony or other crime, who flees from justice and is found in this State, must, on demand of the executive authority of the State, from which he fled, be delivered up by the governor of this State, to be removed to the State having jurisdiction of the crime.

Section 9701. (Sec. 2854.) MAGISTRATE TO ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of the person so charged, who flees from justice and is found in this State.

Section 9702. (Sec. 2855.) PROCEEDINGS FOR THE ARREST AND COMMITMENT OF THE PERSON CHARGED.] The proceedings for the arrest and commitment of a person so charged are, in all respects similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 9703. (Sec. 2856.) WHEN AND FOR WHAT TIME TO BE COMMITTED.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he

gives bail as provided in the next section, or until he is legally discharged.

Section 9704. (Sec. 2857.) HIS ADMISSION TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

Section 9705. (Sec. 2858.) MAGISTRATE MUST NOTIFY THE COUNTY ATTORNEY OF ARREST.] Immediately upon arrest of the person so charged, the magistrate must give notice thereof to the county attorney of the county.

Section 9706. (Sec. 2859.) DUTY OF THE COUNTY ATTORNEY.] The county attorney must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or the presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

Section 9707. (Sec. 2860.) PERSON ARRESTED WHEN TO BE DISCHARGED.] The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 9708. (Sec. 2861.) MAGISTRATE TO RETURN PROCEEDINGS TO DISTRICT COURT.] The magistrate must return his proceedings to the district court of the county, which thereupon must inquire into the cause of the arrest and detention of the person charged, and if in custody, or the time of his arrest has elapsed, it may discharge him from detention, or may order his undertaking or bail canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Section 9709. (Sec. 2862.) FUGITIVES FROM THIS STATE, ACCOUNTS.] When the governor of this State, in the exercise of the authority conferred by section 2, ar-

ticle IV, of the Constitution of the United States, or by the laws of this State, demands from the executive authority of any State of the United States, or of any foreign government, the surrender to the authorities of this State, a fugitive from justice, who has been found and arrested in such State or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the State treasury.

Section 9710. (Sec. 2863.) NO FEE TO BE PAID TO PUBLIC OFFICER PROCURING SURRENDER.] No compensation, fee or reward of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in such section.

XXV. NEBRASKA.

(From the Revised Statutes of the State of Nebraska, 1913, Chapter 18, Sections 8987 to 8991, pages 2405 and 2406.)

EXTRADITION AND FUGITIVES FROM JUSTICE.

8987. Section 412. ARREST OF FUGITIVES FROM OTHER STATES.] When an affidavit shall be filed before any judge of a district court, or any county judge, police judge or any justice of the peace, within this State, setting forth that any person charged with the commission of any criminal offense against the laws of any other State or any of the Territories of the United States, and which, if the act had been committed in this State, would, by the law thereof, have been a crime, is at the time of filing such affidavit within the county where the same may be filed, it shall be lawful, and it is hereby made the duty

of such judge or justice of the peace to issue his warrant, direct to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ the person so charged.

G. S. p. 799; Ann. 2490; Comp. 8074; See Forbes v. Hicks, (1889), 27 Neb. 111, 42 N. W. 898.

8988. Section 413. DUTY OF OFFICER ISSUING WARRANT.] When the person arrested, as provided in the last preceding section shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer, to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examinations shall take place, or cause such person to be delivered to some suitable person, to be removed to the proper place of prosecution.

G. S. p. 799; Ann. 2491; Comp. 8075.

8989. Section 414. DUTY TO NOTIFY SHERIFF OF PROPER COUNTY.] Whenever any person is committed to jail by any judge or justice of the peace, under either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offense shall have been committed, or to the person injured by such offense, or to the proper authorized agent or officer; and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after he shall have received such notice, to apply for and obtain the proper requisition for the person so committed.

G. S. p. 799; Ann. 2492; Comp. 8076.

8990. Section 415. WHEN DEMAND IS MADE BY EXECUTIVE OF ANOTHER STATE.] Whenever a demand is made upon the governor of this State by the executive of any other State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery of any such person charged in such State or Territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws

of the United States or of this State, he shall issue his warrant, under the seal of the State, authorizing the agent who makes the demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this State, at the expense of such agent, and may also by such warrant require all peace officers to afford needful assistance in the execution thereof.

G. S. p. 799; Ann. 2493; Comp. 8077; See *Dennison v. Christian*, (1904), 72 Neb. 703.

8991. Section 416. RETURN OF FUGITIVES TO THIS STATE.] The governor of this State may, in any case authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any foreign government, any fugitive from justice charged with treason or felony, and the accounts of the agents appointed must be audited by the auditor, and paid out of the State funds.

G. S. p. 800; Ann. 2494; Comp. 8078; See *In re Walker*, (1901), 61 Neb. 803, 86 N. W. 510.

XXVI. NEVADA.

(From the Revised Laws of Nevada, 1912, Vol. 2, Chapter 48, Sections 7435 to 7444, pages 2068 to 2070.)

FUGITIVES FROM JUSTICE.

7435. GOVERNOR TO DELIVER FUGITIVE—SECRETARY OF STATE TO ANNEX SEAL WITHOUT CHARGE.] A person charged, in any State or Territory of the United States, with treason, felony or other crime, who shall flee from justice and be found in this State, shall, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this State to be removed to the State or Territory having jurisdiction of the crime. The secretary of state shall,

without charge, annex the seal of this State to all papers, on which it is required, necessary for the extradition of such fugitive.

See *Ex parte Lorraine*, (1881), 16 Neb. 63.

7436. MAGISTRATE MAY ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found in this State.

7437. PROCEEDINGS FOR ARREST AND COMMITMENT OF FUGITIVE.] The proceedings for the arrest and commitment of the person charged shall be in all respects similar to those provided in this act for the offense committed within this State, except that an exemplified copy of an indictment found or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

7438. COMMITMENT OF ACCUSED TO AWAIT REQUISITION—BAIL.] If, from the examination, it appears that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he give bail as provided in the next section or until he be legally discharged.

7439. ADMITTED TO BAIL, WHEN.] The magistrate may admit the person arrested to bail by undertaking with sufficient sureties, and in such sums as he may deem proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of this State.

7440. NOTICE TO DISTRICT ATTORNEY.] Immediately upon the arrest of the person charged, the magistrate shall give notice to the district attorney of the district of the name of the person and the cause of the arrest.

7441. DUTY OF DISTRICT ATTORNEY.] The district attorney shall immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney, or presiding judge of the criminal court of the city or county, within the State or Territory having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

7442. DISCHARGE OF ACCUSED FOR LACK OF PROSECUTION.] The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

7443. RETURN OF MAGISTRATE—PROCEDURE IN DISTRICT COURT.] The magistrate must make return of his proceedings to the district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, the court may discharge him from detention, or may order his undertaking of bail to be cancelled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance.

7444. BOARD OF COMMISSIONERS TO PROVIDE EXPENSE OF RETURNING PRISONER—PROVISO.] Whenever any fugitive from justice shall be returned to this State under interstate or international extradition, and shall be delivered to the sheriff of the county in which the fugitive is charged with having committed a crime against the laws of this State, of the grade of felony, the board of county commissioners of every such county is authorized to provide for the payment by the county of such reasonable sum of money to defray the necessary expenses of the extradition and delivery aforesaid as the board may deem just and reasonable; provided that a majority of the members of the board of county commissioners shall have consented, by order of the board entered on its minutes,

to the extradition of the fugitive before extradition proceedings are instituted, and not otherwise.

XXVII. NEW HAMPSHIRE.

(From the Public Statutes of the State of New Hampshire, 1900, Title 33, Chapter 263, Sections 1 to 12, pages 798, to 799 and 800.)

FUGITIVES FROM JUSTICE.

Section 1. FUGITIVES TO BE ARRESTED, WHEN.] Whenever a person in this State is charged with an offense committed in another State, and is liable by the laws of the United States to be delivered over upon demand of the executive of such other State, any court or justice may, upon complaint on oath setting forth the offense and other matters necessary to bring the case within the law, issue a warrant to bring the person so charged before him or some other justice, to answer the complaint.

Section 2. PROCEEDINGS, IF OFFENSE IS CAPITAL.] If upon examination there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the executive of this State, he shall, if charged with a capital offense, be committed to jail, there to be detained until a day so appointed as to allow a reasonable time to obtain the warrant of such executive.

Section 3. IF NOT CAPITAL.] If a person is charged with an offense not capital, the court or magistrate may order him to recognize, with sufficient sureties, to appear at a day so appointed, and, if he fails to recognize, may commit him to jail, there to be detained not exceeding thirty days, unless sooner discharged by due course of law.

Section 4. PRISONER DISCHARGED UNLESS DEMANDED.] If the person so recognized or committed appears before the court or magistrate upon the day ordered, he shall

be discharged, unless he is demanded by some person authorized by the warrant of the executive to receive him.

Section 5. PRISONER MAY BE ARRESTED, WHEN.] Any person authorized by warrant of the executive may take such offender into custody at any time, whether recognized, committed or discharged, and such taking shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Section 6. COMPLAINANT TO PAY COSTS, ETC.] The complainant in every case shall pay all the actual costs and charges and for the support in jail of a person committed as aforesaid at the rate of two dollars and fifty cents a week, and shall advance the money therefor from time to time, or give to the jailer satisfactory security therefor. If the complainant neglects for twenty-four hours after he is required by the jailer to give such security or to advance such money, the jailer may discharge the person so committed.

Section 7. GOVERNOR TO EXAMINE INTO CAUSE.] Whenever a demand is made upon the governor by the executive of any other State for the delivery over of a person charged in such other State with a crime, the attorney-general, shall ascertain and report to the governor all material facts known relating to the case, and especially whether he is held in custody or is under recognizance to answer for any offense against the laws of the United States, or of this State, or by force of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

Section 8. WHEN TO DELIVER UP AND HOW.] If the governor is satisfied that the demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the State, authorizing the agent who shall make the demand, either forthwith or at such time as shall be designated in the warrant, to take and transport such person to the line of the State, at the expense of such agent, and shall also, by the warrant, require the civil officers within this State to afford all needful assistance in the execution thereof.

Section 9. PRISONER MAY BE CARRIED THROUGH THE STATE.] Whenever any offender is apprehended in any neighboring State, and it may be necessary to carry him through this State to the place where the offense was committed, any justice, upon application and proof that lawful process has issued against such offender, shall issue a warrant under his hand and seal, directed to any sheriff or his deputy, or to any person by name who shall be sworn to the faithful performance of his duty, authorizing such conveyance.

Section 10. MODE OF PROCEEDING IN SUCH CASE.] Such person or officer shall cause the offender to be conveyed to the line of this State nearest to the State where the offense was committed, there to be delivered to some proper officer ready to receive him; and all persons to whom the warrant may be directed are required to obey such order, upon payment or tender of the lawful fees therefor.

Section 11. POWERS OF OFFICERS IN SUCH CASES.] Any sheriff, deputy sheriff, constable, or other officer or justice of any neighboring State, with his assistance, in the execution of any lawful process issuing from and returnable to any court in such State, may pass himself, and convey such persons or things as he may have in his custody by virtue of such lawful process, through this State, in as full and ample a manner as any officer of this State might do.

Section 12. PENALTY FOR OBSTRUCTING OFFICER.] If a person shall assault or obstruct any such officer or his assistant, passing through this State in the execution of any such process, he shall be liable to the same punishment as for assaulting or obstructing an officer of this State.

XXVIII. NEW JERSEY.

(From the Compiled Statutes of New Jersey, 1911, Vol. 2, Section 24, page 1750 and Sections 100 to 105, pages 1851 and 1852.)

FUGITIVES FROM JUSTICE.

Section 24. VIOLATION OF STATUTES RELATING TO PROCEDURE ON EXTRADITION.] Any agent or officer, or other person, appointed by or representing the authorities of any other State, who shall violate any provisions of any statute of this State, regulating the procedure for the extradition of any person charged with any criminal offense in any other State, or claimed to be a fugitive from justice, shall be guilty of a misdemeanor.

P. L. 1898, p. 800.

Section 100. TAKING PERSONS OUT OF STATE TO ANSWER CRIMINAL CHARGE WITHOUT WARRANT OF GOVERNOR.] It shall be unlawful to take, or cause to procure to be taken, or to aid or abet, in taking any person or persons from out of this State, whether with or without the consent of such person or persons, for the purpose of answering any criminal charge that may have been preferred against such person or persons in any other State, except upon the warrant of mandate of the governor of this State.

P. L. 1898, p. 902.

Section 101. WARRANT OF GOVERNOR.] If the governor shall be satisfied that the facts in the premises justify the granting of an application for extradition, he shall thereupon issue his warrant or mandate to the sheriffs, under-sheriffs, detectives or constables of the several counties of the State, directing said officers to cause the said person or persons to be apprehended and delivered into the custody of the officer or agent appointed by the governor of the State making such requisition to receive such person or persons.

P. L. 1898, p. 903.

Section 102. ARREST ON WARRANT, AND DELIVERY TO PROPER OFFICER OR AGENT.] On receiving said warrant or mandate from the governor as aforesaid, it shall be the duty of any sheriff or other said officer to whom it may be delivered to use all due diligence to cause said person or persons mentioned therein, if found in his county, to be arrested, if not already arrested, and to be delivered into the custody of the officer or agent aforesaid.

P. L. 1898, p. 903.

Section 103. RECEIPT FOR BODY OF PERSON ARRESTED.] It shall then be lawful for such officer or agent aforesaid to take such person or persons out of this State, giving a receipt for the body or bodies, of such person or persons to the said officer, who shall transmit the same to the prosecutor of the pleas of the county where such person or persons may be arrested, who shall forward the same to the secretary of the State.

P. L. 1898, p. 903.

Section 104. MAGISTRATES TO ISSUE WARRANTS OF ARREST.] It shall be lawful for any magistrate, on satisfactory evidence under oath being presented to him that application has been made, or is about to be made by the authorities of any State to the governor of this State for the extradition of any person or persons within the jurisdiction of such magistrate to issue a warrant or warrants for the arrest of such person or persons and to commit such person or persons to the county jail, or to take bail for his or their appearance from day to day for a period not to exceed thirty days from the date of the arrest of said person or persons; provided, that any person or persons who may be so arrested and committed to the county jail shall not be detained or imprisoned for a longer period than thirty days.

P. L. 1898, p. 903.

Section 105. EXPENSES OF RETURNING FUGITIVES FROM JUSTICE; HOW PAID.] In any case where a person charged in this State with a crime shall flee from justice and be found in another State, and the attorney-general or the

prosecutor of the pleas for any county where such person is so charged shall recommend to the governor or person administering the government of this State to demand the said fugitive, so that he may be brought into this State for trial, and the said fugitive shall, on the demand of the executive authority of this State, be delivered up for removal to this State, the expense of such removal being first ascertained to the satisfaction of the prosecutor of the pleas of the county where such person is charged, and being approved by a judge of the court of oyer and terminer of said county, shall be paid by the county collector of said county out of the funds of said county.

P. L. 1898, p. 903.

XXIX. NEW MEXICO.

(From New Mexico Statutes, 1915, Chapter 46, Sections 2406 to 2423, pages 726 to 728.)

FUGITIVES FROM JUSTICE.

2406. FUGITIVES FROM STATE—DUTY OF MAGISTRATE.] Whenever a crime has been committed in this State and the perpetrator has escaped beyond the limits of the State so that the ordinary process of law cannot be served upon him, it shall be the duty of any magistrate immediately to enter upon the due investigation and examination, and as soon as concluded he shall transmit to the governor a certified copy of such examination.

2407. REQUISITIONS.] The governor of the State, as soon as he receives such certified copy and ascertains in what State or Territory the accused is, shall, without delay, make a requisition upon the governor of the State or Territory into which the accused has taken refuge, for his delivery to the authorities of this State.

2408. EXTRADITION—PAYMENT OF EXPENSE.] The governor is authorized to pay the costs and expenses incurred in the apprehension and transportation to this State of such accused from the State funds.

2409. ID.] The State auditor shall approve and the State treasurer shall pay, any sum which the governor may approve and order under the provisions of the three preceeding sections, from any State funds not otherwise appropriated.

2410. REQUISITIONS — HOW HONORED.] Any person charged in any State or Territory of the United States with treason, felony or other crime, and who shall escape from justice and be found in this State, shall be, on a requisition from the executive authority of the State or Territory from which he shall have escaped, delivered up by the governor of this State, in order that he may be carried to the State or Territory that has jurisdiction of said crime.

2411. FUGITIVES FROM OTHER STATES—WARRANT FOR ARREST.] Any justice of the peace or other authority shall have power to issue a process for the apprehension of any person thus charged, who shall have fled from justice and be found in this State.

2412. ID.—PROCEDURE—EVIDENCE.] The proceedings for the apprehension and imprisonment of any person charged with a criminal offense shall be in all respects similar to those proceedings in our code for the apprehension and imprisonment of a person charged with a criminal offense, with the exception, that an exemplified copy of the accusation attached to other judicial proceedings had against him in the State or Territory in which he may have been charged to have committed the offense, shall be received as conclusive evidence before the justice.

2413. ID. — HEARING — CONFINEMENT — BAIL.] If it should appear on the examination, that the person accused, has committed the crime alleged, the justice, by a written order setting forth the accusation, shall confine him to jail for any time specified in the order that he may deem sufficient, in order that the arrest of the fugitive

may be made by order of the executive of this State, upon a requisition of the executive authority of the State or Territory in which he shall have committed the offense, unless the accused shall give security as provided in the following section, or until he shall be legally set at liberty.

2414. ID.—BAIL.] It shall be the duty of the justice of the peace, unless the offense of which the fugitive is charged shall be proved to be an offense that merits capital punishment according to the laws of the State or Territory in which the offense was committed, to admit the person arrested to bail under a bond with sufficient securities, in any sum that the justice may deem sufficient for his appearance before him at the time specified in the bond given, and to deliver himself up for the purpose of being arrested upon the requisition of the governor of this State.

2415. ID.—DISCHARGE UNDER BOND.] The person so arrested shall be set at liberty under the bond, unless that before the time designated in the order or bond, he shall be arrested under a process from the governor of this State.

2416. ID.—FORFEITURE OF BOND.] If the fugitive should be set at liberty under bonds, and shall fail to deliver himself up according to his bond, the justice shall indorse on his bond, "Forfeited," signing his name to the same, and transmit it to the clerk of the district court by the first day of the next ensuing term, and a conditional judgment shall be rendered thereon, and proceedings had as in case of forfeited bonds in that court, the indorsement of the justice being presumptive evidence of the forfeiture.

2417. ID.—POWER OF JUSTICE OF THE PEACE.] At the expiration of the time specified in the process, the justice may set him at liberty, remand him to jail until the following day, or may admit him to bail for his appearance and surrender, as provided in section 2414; if he shall have given bond, and shall appear according to the bonds entered into, the justice may set him at liberty or may

require him to give new bonds for his appearance and surrender at any future day.

2418. ID.—PERSONS HELD FOR OFFENSES IN THIS STATE.] Any person against whom prosecution shall have been commenced under the laws of this State for an offense against the law, any such person may be surrendered or not surrendered, at the discretion of the governor, before he shall have been tried or set at liberty, or if he shall be sentenced or punished for the same.

2419. ID.—PROCESS.] The process of the executive may be directed to the sheriff or any other officer who may be deemed competent to take charge of the examination.

2420. ID.—AUTHORITY OF OFFICER.] Such process shall authorize the officer or person to whom it is directed, to arrest the fugitive in any place within the limits of the State, and to require the assistance of all sheriffs and constables to whom the process may be shown, to aid in the execution thereof.

2421. ID.—AUTHORITY OF OFFICER.] Every officer or person charged with the execution or service of the process has the same authority to arrest the fugitive, to require assistance to do so, as sheriffs and other officers have by law in the execution of process directed to them, and those who shall refuse to assist them shall be subject to the same penalties.

2422. ID.—CONFINEMENT OF PRISONER.] The officer or person executing such process may, when it shall be necessary, confine the prisoner arrested by him, in the jail of any county through which he may pass, and the jailor of said jail shall receive and keep him securely until the person who has him in charge is ready to proceed on his way with him, and said person shall be responsible for the payment of the expenses of his retention in jail.

2423. ACCUSED PERSON FLEEING TO OTHER COUNTY.] Whenever any person who shall have committed any criminal offense in any county, shall escape into any other, any magistrate within the county in which such

offender may be found may issue his warrant for his apprehension, or may indorse a warrant which has been issued by a magistrate in the county from which the criminal escaped, and have him apprehended thereon and sent before some magistrate of the county in which the offense was committed, for trial.

XXX. NEW YORK.

(From Cook's Criminal Code of the State of New York, 1915, Title 5, Chapter 1, Sections 827 to 834, pages 476 to 483.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 827. TO BE DELIVERED UP BY THE GOVERNOR, ON DEMAND, ETC.] It shall be the duty of the governor, in all cases where, by virtue of a requisition made upon him by the governor of another State or Territory, any citizen, inhabitant or temporary resident of this State is to be arrested, as a fugitive from justice (provided that said requisition be accompanied by a duly certified copy of the indictment or information from the authorities of such other State or Territory, charging such person with treason, felony or crime in such State or Territory), to issue and transmit a warrant for such purpose to the sheriff of the proper county or his under sheriff, or in the cities of this State, (except in the city and county of New York, where such warrant shall only be issued to the superintendent or any inspector of police) to the chiefs, inspectors or superintendents of police, and only such officers as are above mentioned, and such assistants as they may designate to act under their direction shall be competent to make service of or execute the same. The governor may direct that any such fugitive be brought before him, and may for cause, by him deemed proper, revoke any warrant issued by him, as herein provided. The officer to whom is directed and intrusted

the execution of the governor's warrant must, within thirty days from its date, unless sooner requested, return the same and make return to the governor of all his proceedings had thereunder, and of all facts and circumstances relating thereto. Any officer of this State, or of any city, county, town or village thereof, must upon request of the governor, furnish him with such information as he may desire in regard to any person or matter mentioned in this chapter.

2. Before any officer to whom such warrant shall be directed or intrusted shall deliver the person arrested into the custody of the agent or agents named in the warrant of the governor of this State, such officer must, unless the same is waived, as hereinafter stated, take the prisoner or prisoners before a judge of the supreme court, or a county judge, who shall, in open court if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process, and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, affidavit or warrant annexed thereto, or in the warrant issued by the governor thereon, he or they may have a writ of *habeas corpus* upon filing an affidavit to that effect. Said person or persons so arrested may, in writing, consent to waive the right to be taken before said court or a judge thereof at chambers. Such consent or waiver shall be witnessed by the officer intrusted with the execution of the warrant of the governor, and one of the judges aforesaid or a counselor at law of this State, and such waiver shall be immediately forwarded to the governor by the officer who executed said warrant. If, after a summary hearing as speedily as may be consistent with justice, the prisoner or prisoners shall be found to be the person or persons indicted or informed against, and mentioned in the requisition, the accompanying papers and the warrant issued by the governor thereon, then the court or judge shall order and direct the officer intrusted with the execution of the said warrant of the governor

to deliver the prisoner or prisoners into the custody of the agent or agents designated in the requisition and the warrant issued thereon, as the agent or agents upon the part of such State to receive him or them; otherwise to be discharged from custody by the court or judge. If upon such hearing the warrant of the governor shall appear to be defective or improperly executed, it shall be by the court or judge returned to the governor, together with a statement of the defect or defects, for the purpose of being corrected and returned to the court or judge, and such hearing shall be adjourned a sufficient time for the purpose, and in such interval the prisoner or prisoners shall be held in custody until such hearing be finally disposed of.

3. It shall not be lawful for any person, agent or officer to take any person or persons out of this State, upon the claim, ground or pretext that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings afore described, and any officer, agent, person or persons who shall procure, incite or aid in the arrest of any citizen, inhabitant or temporary resident of this State, for the purpose of taking him or sending him to another State, without a requisition first duly had and obtained, and without a warrant duly issued by the governor of this State, served by some officer as in this section provided, and without, except in case of waiver in writing as aforesaid, taking him before a court or judge as aforesaid, unless in pursuance to the provisions of the following sections of this chapter, and any officer, agent, person or persons who shall, by threats or undue influence, persuade any citizen, inhabitant or temporary resident of this State to sign the waiver of his right to go before a court or judge as hereinbefore provided, or who shall do any of the acts declared by this chapter to be unlawful, shall be guilty of a felony, and upon conviction be sentenced to imprisonment in a State prison or penitentiary for the term of one year. Any wilful violation of this act by any of the above named officers shall be deemed a misdemeanor in office.

Amended by L. 1886, ch. 638; L. 1895, ch. 880.

Section 828. **MAGISTRATE TO ISSUE WARRANT.]** A magistrate may issue a warrant as a preliminary proceedings to the issuing of a requisition by the governor of another State or Territory upon the governor of this State for the apprehension of a person charged with treason, felony or other crime, who shall flee from justice and be found within this State.

Amended by L. 1886, ch. 628.

Section 829. **PROCEEDINGS FOR ARREST AND COMMITMENT OF THE PERSON CHARGED.]** The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Code, for the arrest and commitment of a person charged with a public offense committed in this State; except, that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 830. **WHEN AND FOR WHAT TIME TO BE COMMITTED.]** If from the examination under such warrant it appears to the satisfaction of the magistrate that the person under arrest is charged in such other State or Territory with treason, felony or other crime and has fled from justice, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county for a time specified in the warrant, to enable an arrest of the fugitive to be made under the warrant of the governor of this State, which commitment shall not exceed thirty days, exclusive of the day of arrest, on the requisition of the executive authority of the State or Territory in which he is charged to have committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged.

Amended by L. 1896, ch. 638; L. 1897, ch. 427.

Section 831. **HIS ADMISSION TO BAIL.]** Any judge of any court named in section eight hundred and twenty-seven may, in his discretion, admit the person arrested to bail, by an undertaking, with sufficient sureties and

in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, which must not be later than the expiration of thirty days from the date of arrest exclusive of such date, and for his surrender to be arrested upon the warrant of the governor of this State.

Amended by L. 1886, ch. 638.

Section 832. **MAGISTRATE TO GIVE NOTICE TO THE DISTRICT ATTORNEY OF THE NAME OF THE PERSON AND THE CAUSE OF HIS ARREST.]** Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney of the county of the name of the person and the cause of his arrest.

Section 833. **DISTRICT ATTORNEY TO GIVE NOTICE TO EXECUTIVE AUTHORITY OF THE STATE OR TERRITORY, ETC.]** The district attorney must immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Section 834. **PERSON ARRESTED TO BE DISCHARGED, UNLESS SURRENDERED WITHIN THE TIME LIMITED.]** The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this State.

XXXI. NORTH CAROLINA.

(From the Revised General Statutes of State of North Carolina, 1908, Vol. 2, Chapter 80, Sections 3183 to 3189, pages 1698 to 1701.)

FUGITIVES.

3183. **FELONS FLEEING FROM JUSTICE, OUTLAWED.]** In all cases where any two justices of the peace, or any

judge of the supreme, superior or criminal court, shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest, and service of the usual process of the law, the said judge, or the said two justices, being justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any judge, empowering and requiring the sheriff of any county in the State in which said fugitive shall be, and when issued by two justices, empowering and requiring the sheriff of the county of said justices, to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the courthouse of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the judge or justices shall direct; and if any person against whom proclamation hath been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the State may capture, arrest and bring to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime.

3184. FROM ANOTHER STATE, HOW ARRESTED AND HELD.] Any justice of the supreme court, or any judge of the superior court or of any criminal court, or any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, on satisfactory information laid before him that any fugitive or other person in the State has committed, out of the State and within the United States, any offense, which by law of the State in which the offense was committed, is punishable either capitally or by imprisonment for one year or upwards

in any State prison, shall have full power and authority, and is hereby required to issue a warrant for said fugitive or other person and commit him to any jail within the State for the space of six months, unless sooner demanded by the public authorities of the State wherein the offense may have been committed, pursuant to the act of Congress in that case made and provided. If no demand be made within that time the said fugitive or other person shall be liberated, unless sufficient cause be shown to the contrary.

3185. **MAGISTRATE TO KEEP RECORD; TRANSMIT COPY TO GOVERNOR.]** Every magistrate committing any person under the preceding section, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the governor for such action as he may deem fit therein under the law.

3186. **DUTY OF GOVERNOR.]** The governor shall immediately inform the governor of the State or Territory in which the crime is alleged to have been committed, or the president of the United States, if it be alleged to have been committed within the District of Columbia, of the proceedings had in such case.

3187. **SURRENDERED ON ORDER OF GOVERNOR.]** Every sheriff or jailer, in whose custody any person so committed shall be, upon the order of the governor, shall surrender him to the person named in such order.

3188. **GOVERNOR MAY EMPLOY AGENTS, AND OFFER REWARDS FOR ARREST OF.]** The governor, on information made to him of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the State, and of having fled out of the jurisdiction thereof, or who conceals himself within the State to avoid arrest, or who, having been convicted, has escaped and cannot otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the

purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place as in the proclamation shall be directed; and he may from time to time issue his warrants on the State treasurer for sufficient sums of money for such purpose.

3189. EXPENSES OF BRINGING FROM ANOTHER STATE PAID.] In all cases where the governor of the State has made a requisition on the governor of another State for any fugitive from justice and has sent an agent to receive said fugitive, it shall be lawful for the governor to issue a warrant on the State treasurer for the amount of money necessary to pay the expenses of said agent and other costs in the arresting of said fugitive from justice, to be paid by the treasurer of the State.

XXXII. NORTH DAKOTA.

(From the Compiled Laws of North Dakota, (1914), Vol. 2, Chapter 13, Article 12, Sections 11150 to 11165, bottom paging 2506 to 2508.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 11150. GOVERNOR MAY OFFER REWARD FOR CRIMINAL.] The governor may offer a reward not exceeding \$1,000.00, payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the State Prison, or,

2. Of any person who has committed, or is charged with the commission of an offense punishable with death, or,

3. Of any person who is charged with having absconded with or embezzled, or unlawfully taken and carried away any funds, assets or property of any State or National bank, doing business in this State.

Section 11151. DELIVERY OF FUGITIVES UPON REQUISITION.] A person charged in any State of the United

States with treason, felony or other crime, who flees from justice and is found in this State, must, on the demand of the executive authority of the State, from which he fled, be delivered up by the governor of this State, to be removed to the State having jurisdiction of the crime.

Section 11152. MAGISTRATE TO ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of the person so charged, who flees from justice and is found in this State.

Section 11153. PROCEEDINGS FOR ARREST AND COMMITMENT.] The proceedings for the arrest and commitment of a person so charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 11154. ACCUSED MAY BE COMMITTED—TIME.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as approved in next section, or until he is legally discharged.

Section 11155. ACCUSED MAY BE ADMITTED TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

Section 11156. NOTICE TO STATE'S ATTORNEY.] Immediately upon the arrest of the person so charged, the

magistrate must give notice thereof to the State's attorney of the county.

Section 11157. DUTY OF STATE'S ATTORNEY.] The State's attorney of the county must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or the presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

Section 11158. WHEN ACCUSED MUST BE DISCHARGED.] The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 11159. MAGISTRATE TO MAKE RETURN. DUTY OF DISTRICT COURT.] The magistrate must return his proceedings to the next district court of the county, which thereupon must inquire into the cause of the arrest and detention of the person charged, and if in custody, or the time of his arrest has elapsed, it may discharge him from detention, or may order his undertaking or bail canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Section 11160. FUGITIVE GRANTED TWENTY-FOUR HOURS. COUNSEL. HABEAS CORPUS.] Any person who is arrested within this State, by virtue of a warrant issued by the governor of this State, upon the requisition of the governor of any other State or Territory, as a fugitive from justice, under the laws of the United States, shall not be delivered to the agent of such State or Territory until notified of the demand made for his surrender, and given twenty-four hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of *habeas corpus*, the prisoner shall be forthwith taken to the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the judge of the district court.

Section 11161. PENALTY FOR DISOBEDIENCE OF LAST SECTION.] Any officer who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section, shall be deemed guilty of a misdemeanor.

Section 11162. GOVERNOR MAY DEMAND FUGITIVES. APPOINT AGENTS FOR RETURN OF. PAYMENT OF AGENTS.] The governor of this State may in any case authorized by the Constitution and laws of the United States, demand of the executive authority of any other State or Territory within the United States, any fugitive from justice or any person charged with treason, felony or other crimes in this State, and appoint agents to receive such persons for and on behalf of this State. The account of any such agent or agents employed for such purpose shall in cases of fugitive and felony be paid by the State, and for other crime be audited by the board of county commissioners of the county in which the crime was committed, and paid by such county; *provided*, that only the sheriff of said county, or one of his deputies, or a constable or policeman thereof, shall be appointed such agent, and such agent shall not be paid more than his actual expenses, and a *per diem* of three dollars while in actual discharge of his duty.

Section 11163. PROVISION FOR THE PAYMENT OF COSTS AND EXPENSES IN EXTRADITION CASES.] In all cases or proceedings which have been or may hereafter be brought for the return of a fugitive from justice from any foreign State or country, under and by virtue of the laws of the United States, on application of the governor of this State, all necessary costs and expenses shall be allowed and shall be paid by the State in cases of treason and felony, in the same manner as costs and expenses are paid in case of demand of the governor of this State upon the executive authority of any other State.

Section 11164. NO COMPENSATION ALLOWED. EXCEPTIONS.] No compensation, fee or reward of any kind, can be paid to or received by a public officer of this State, for a service rendered or incurred in procuring from the

governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him herein, except as provided in section 11162.

Section 11165. VIOLATION A MISDEMEANOR.] A violation of the last section is a misdemeanor.

XXXIII. OHIO.

(From Wilson's Ohio Criminal Code, 1911, Chapter 6, Sections 13520 to 13522, pages 661, 662 and 663.)

FUGITIVES FROM OTHER STATES.

Section 13520. ARREST OF FUGITIVES FROM OTHER STATES.] When an affidavit is filed before a judge of a common pleas, probate or police court or a justice of the peace, setting forth that a person charged with the commission of an offense against the laws of another State or Territory of the United States, which, if committed in this State would, by the laws thereof, have been a crime, is, at the time of filing such affidavit, within the county where it is filed, such judge or justice of the peace shall issue a warrant directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before him the person so charged.

R. S. Sec. 7156; 66 v. 319, sec. 211; S. & S. 608; S. & C. 1197.

Section 13521. MAY BE COMMITTED TO JAIL.] When a person is arrested in pursuance of the next preceding section, and brought before the officer who issued the warrant, he shall hear and examine such charge, and, upon proof adjudged by him to be sufficient, commit such person to the jail of the county in which such examination is had, or cause him to be delivered to a suitable person to be removed before such judge or justice of the proper county in which to take such examination, who shall take it and proceed as if the warrant had been issued by him.

R. S. Sec. 1757; 66 v. 319, Sec. 212; S. & C. 1197;
S. & S. 609.

Section 13522. NOTICE TO BE GIVEN TO JUDGE OR MAGISTRATE.] When a person is committed to jail by a judge or justice of the peace, under the next preceding section, such judge or justice shall forthwith give notice, by letter or otherwise, to the sheriff of the county in which such offense was committed, or to the person injured by such offense. A person so committed shall not be detained in jail longer than to allow a reasonable time to the persons receiving such notice to apply for and obtain the proper requisition for such person.

R. S. Sec. 7158; 66 v. 319, Sec. 213; S. & C. 1197;
S. & S. 609.

Section 13530. EXAMINING COURT TO BE HELD BY PROBATE JUDGE, WHEN AND HOW.] When a person is committed to jail charged with the commission of an offense, and wishes to be discharged therefrom, the sheriff or jailer shall forthwith give to the probate judge, clerk and prosecuting attorney of the proper county, at least three days' notice of the time of holding an examining court, to attend, according to such notice, at the courthouse. The judge having examined the witnesses, including the accused, if he request an examination shall discharge him, if he find there is no probable cause for holding him to answer; otherwise he shall admit him to bail or remand him to jail. Such judge may adjourn the examination from day to day or for such longer period as is necessary for the furtherance of justice, on good cause shown by the State or the accused.

R. S. Sec. 7165; 66 v. 294, Sec. 48; S. & C. 1179.

XXXIV. OKLAHOMA.

(From Revised Laws of the State of Oklahoma, (1910), Vol. 2, Article XX, Sections 6080 to 6094, pages 1682 to 1684.)

FUGITIVES FROM JUSTICE.

Section 6080. GOVERNOR MAY OFFER REWARD.] The governor may offer a reward not exceeding one thousand dollars payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the State Prison, or

2. Of any person who has committed, or is charged with the commission of an offense punishable with death.

Section 6081. DELIVERY OF CRIMINALS ON REQUISITION.] A person charged in any State of the United States with treason, felony or other crime, who flees from justice and is found in this State, must, on demand of the executive authority of the State, from which he fled, be delivered up by the governor of this State, to be removed to the State having jurisdiction of the crime.

Section 6082. MAGISTRATE TO ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of the person so charged, who flees from justice and is found in this State.

Section 6083. PROCEEDINGS FOR THE ARREST AND COMMITMENT OF FUGITIVE.] The proceedings for the arrest and commitment of a person so charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 6084. COMMITMENT.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusa-

tion, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of this State, on the requisition of the executive authority of the State in which he committed the crime, unless he gives bail as approved in the next section, or until he is legally discharged.

Section 6085. ADMISSION TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

Section 6086. NOTICE TO COUNTY ATTORNEY.] Immediately upon the arrest of the person so charged, the magistrate must give notice thereof to the county attorney of the county.

Section 6087. DUTY OF COUNTY ATTORNEY.] The county attorney of the county must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or the presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

Section 6088. PERSON DISCHARGED, WHEN.] The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 6089. DISTRICT COURT TO INQUIRE INTO CASE.] The magistrate must return his proceedings to the next district court of the county, which thereupon must inquire into the cause of the arrest and detention of the person charged, and if in custody, or the time of his arrest has elapsed, it may discharge him from detention, or may order his undertaking or bail canceled, or may continue his detention for a longer time, or readmit him

to bail, to appear and surrender himself within a time specified in the undertaking.

Section 6090. FUGITIVE GRANTED TWENTY-FOUR HOURS.] Any person who is arrested within this State, by virtue of a warrant issued by the governor of this State, upon the requisition of the governor of any other State or Territory, as a fugitive from justice, under the laws of the United States, shall not be delivered to the agent of such State or Territory, until notified of the demand made for his surrender, and given twenty-four hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of *habeas corpus*, the prisoner shall be forthwith taken before the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the judge of the district court.

Section 6091. PENALTY FOR UNLAWFUL DELIVERY OF FUGITIVE.] Any officer who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section, shall be deemed guilty of a misdemeanor.

Section 6092. EXPENSES OF FOREIGN ARRESTS.] Whenever the governor of this State shall demand from the executive authority of a State or Territory of the United States, or of a foreign government, the surrender to the authorities of this State of a fugitive from justice, the accounts of the person employed by him for that purpose must be paid out of the county treasury of the county in which the crime is alleged to have been committed, and to which said fugitive is returned for trial. *Provided*, that the persons employed by virtue of this section shall receive for their services three dollars *per diem* and actual expenses while actually and necessarily employed, and no more.

Section 6093. SAME.] No compensation, fee or reward of any kind shall be paid to or received by any person for service rendered or expense incurred in procuring from the governor the demand mentioned in the preceding section for the arrest or surrender of the fugi-

tive, or for conveying him to the county in which the alleged crime, for which he is arrested, is claimed to have been committed, except as provided in the preceding section.

Section 6094. VIOLATION A MISDEMEANOR.] A violation hereof is a misdemeanor.

XXXV. OREGON.

(From Lord's Oregon Laws, 1910, Vol. 1, Title 18, Chapter 25, Section 1870 to 1888, pages 854, 855, 856 and 857.)

PROCEEDINGS IN RELATION TO FUGITIVES FROM JUSTICE.

1870. AGENT TO DEMAND FUGITIVE, GOVERNOR MAY APPOINT.] Whenever a person charged with treason, felony or other crime in this State shall flee from justice, the governor of this State may appoint an agent to demand such fugitive of the executive authority of any State or Territory of the United States in which he may be found.

L. 1864; D. Sec. 487; H. Sec. 1695; B. & C. Sec. 1718.

1871. GOVERNOR MAY REQUIRE REPORT FROM DISTRICT ATTORNEY.] Before appointing such agent the governor may require the district attorney of the county to investigate the matter and report to him the material circumstances, together with his opinion upon the expediency of allowing the application.

L. 1864; D. Sec. 488; H. 1696; B. & C. Sec. 1719.
Sec. 1867-1871.

1872. AGENT'S EXPENSES, HOW PAID.] The account of the agent, embracing his actual expenses incurred in performing the service, must be paid by the State, after being audited and allowed as other claims against the State.

L. 1864; D. Sec. 489; H. 1697; B. & C. 1720.

1873. FUGITIVE, WHEN TO BE DELIVERED UP BY GOVERNOR.] A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this State, must, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this State, to be removed to the State or Territory making the demand.

L. 1864; D. Sec. 490; H. Sec. 1698; B. & C. Sec. 1721.

1874. WHEN FUGITIVE NOT TO BE DELIVERED, AND WHEN A MATTER OF DISCRETION.] When the person demanded is in custody in this State, either upon a criminal charge, an indictment for a crime, or a judgment upon a conviction thereof, he cannot be delivered up until he is legally discharged from such custody; but if he be in custody upon civil process only, the governor may deliver him up or not before the termination of such custody, as he may deem most conducive to the public good.

L. 1864; D. 491; H. Sec. 1699; B. & C. Sec. 1722.

1875. REPORT OF DISTRICT ATTORNEY IN RELATION TO CUSTODY OF FUGITIVE.] Before issuing a warrant for the delivery of a fugitive from justice, the governor may require the district attorney of the county to ascertain and report to him whether such fugitive is in custody as mentioned in the last section, and if he be so upon civil process only, whether such custody be with the consent or procurement of the fugitive.

L. 1864; D. Sec. 492; H. Sec. 1700; B. & C. Sec. 1723.

1876. WHEN AND TO WHOM GOVERNOR TO ISSUE WARRANT FOR ARREST.] When the governor finds that the demand is conformable to law, and the person demanded should be given up, either then or at some future time, if he be in custody, he must issue his warrant, under the seal of the State and attested by the secretary of State, directed to the person who makes the demand, and authorizing him, either forthwith or at some future time

therein designated, to take and transport the fugitive to the border line of the State.

L. 1864; D. Sec. 493; H. Sec. 1701; B. & C. Sec. 1724.

1877. EXECUTIVE WARRANT, WHAT TO REQUIRE.] The executive warrant must also require all peace officers and magistrates, when requested by the person to whom the warrant is directed, to render all needful assistance in the execution thereof, and in so doing, such officers or magistrates may exercise the same power and authority to prevent a rescue, an escape, or to effect a recapture, as if the fugitive was in arrest upon a charge of crime committed in this State.

L. 1864; D. Sec. 494; H. Sec. 1702; B. & C. Sec. 1725.

1878. MAGISTRATE MAY ISSUE WARRANT.] A magistrate authorized to issue a warrant of arrest may issue a warrant for the arrest of a person charged as provided in section 1873 who shall flee from justice and be found in this State.

L. 1864; D. Sec. 495; H. Sec. 1703; B. & C. Sec. 1726.

1879. PROCEEDINGS FOR ARREST PRESCRIBED.] The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a crime committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State or Territory in which he is charged to have committed the crime, may be received as evidence before the magistrate.

L. 1864; D. Sec. 496; H. Sec. 1704; B. & C. Sec. 1727.

1880. WHEN MAGISTRATE TO COMMIT.] If from the examination it appear that the person charged has committed the crime alleged, the magistrate must commit him to the proper custody in his county for a time specified in the commitment, which the magistrate deems reasonable, to enable the arrest of the fugitive under the

warrant of the executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the crime, or until he be legally discharged, unless he give bail as provided in the next section.

L. 1864; D. Sec. 497; H. Sec. 1705; B. & C. Sec. 1728.

1881. ADMISSION OF FUGITIVE TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties and in such an amount as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of this State.

L. 1864; D. Sec. 498; H. Sec. 1706; B. & C. Sec. 1729.

1882. MAGISTRATE TO GIVE NOTICE TO GOVERNOR OF COMMITMENT.] Immediately upon the commitment of the person charged, the magistrate must inform the governor of this State of the name of the person, the cause of the arrest, and his commitment; and the governor must thereupon give the like notice to the executive authority of the State or Territory having jurisdiction of the crime, to the end that a demand be made for the arrest and surrender of the person charged.

L. 1864; D. Sec. 499; H. Sec. 1707; B. & C. Sec. 1730.

1883. FUGITIVE TO BE DISCHARGED, UNLESS.] The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this State.

L. 1864; D. Sec. 500; H. Sec. 1708; B. & C. Sec. 1731.

1884. PERSON CAUSING WARRANT TO ISSUE LIABLE—WHEN FUGITIVE DISCHARGED.] The person making the complaint of the magistrate is liable for the costs and expenses of the proceeding, and for the support in the jail of the person so committed; and unless he advance

to the jailor, from week to week during the commitment, a sum sufficient for such support, the jailor may, upon the order of any magistrate of the county, discharge such person from custody.

L. 1864; D. Sec. 501; H. Sec. 1709; B. & C. Sec. 1732.

1885. REWARD OF NOT TO EXCEED ONE THOUSAND DOLLARS, COUNTY MAY OFFER.] If any person or persons charged with or convicted of any felony within this State shall break prison, escape, or flee from justice, or abscond, or secrete himself, in such cases it shall be lawful for the county court of such county where said crime has been committed, if the said court shall deem necessary, to offer a reward not to exceed the sum of \$1,000 for the apprehension and delivery of each of the bodies of said person or persons to the custody of such officer as the said county court shall direct.

L. 1893, p. 82, Sec. 1; B. & C. Sec. 1733.

1886. COUNTY COURT AUTHORIZED TO PAY REWARD.] Any person apprehending and delivering the body or bodies of such person or persons to the proper officer, and producing to the county court, the receipt of such officer, shall be entitled to and shall be paid the reward offered by the county court.

L. 1893, p. 82, Sec. 2, B. & C. Sec. 1734.

1887. CLERK TO ISSUE WARRANT FOR REWARD, WHEN.] The county court on the presentation of the duly certified claim of the applicant for reward and accompanied by the proper orders and receipts, shall certify the amount offered in such reward to the county clerk of such county under the seal of such county court, and the county clerk of such county shall draw a warrant on the treasurer of such county for the amount so authorized.

L. 1893, p. 82, Sec. 3; B. & C. Sec. 1735.

1888. SHERIFF MAY ELECT TO RECEIVE EITHER REWARD OR LEGAL FEES.] If the sheriff of any other county than the one where said crime was committed apprehend the said criminal, he shall elect to receive either the re-

ward offered or the regular fees allowed him by law for such service.

L. 1893, p. 82, Sec. 4; B. & C. Sec. 1736.

XXXVI. PENNSYLVANIA.

(From Pepper and Lewis' Digest of the Laws of Pennsylvania, 1907, Vol. 1, Criminal Procedure, Sections 4, 5, 6, 7 and 8, pages 2423, 2424 and 2425.)

FUGITIVES FROM JUSTICE.

Section 4. WARRANT TO ISSUE FOR ARREST OF FUGITIVES FROM ANOTHER STATE.] It shall be the duty of the governor of this commonwealth, in all cases where, by virtue of a requisition made upon him by the governor of another State or Territory, any citizen, inhabitant or temporary resident of this commonwealth, is to be arrested as a fugitive from justice, (*provided* that the said requisition be accompanied with a certified copy of the indictment or information, from the authorities of such other State or Territory, charging such person with any crime in such State or Territory) to issue and transmit a warrant for such purpose to the sheriff of the proper county, or other officer authorized by law to execute warrants, in which the requisition describes the party or parties to be residing or domiciled; and the sheriff or the deputy sheriff, or other officer, as aforesaid of the county, shall alone be competent to make service of the same.

1878, May 24; P. L. 137, Sec. 1.

Section 5. PROCEEDINGS AND HEARING.] Before the sheriff, or his deputy, or other officer, as aforesaid, shall deliver the person arrested into the custody of the officer or officers named in the requisition, it shall be the duty of the sheriff or other officer as aforesaid to take the prisoner or prisoners before a judge of a court of record, who shall in open court, if in session, otherwise at chambers inform the prisoner or prisoners of the cause of his

or their arrest, the nature of the process, and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment or affidavit before a magistrate of said other State or Territory, charging said person with some crime and warrant of arrest, he or they may have a writ of *habeas corpus*, upon filing an affidavit to that effect, except the said person or persons so arrested or taken shall have previously consented to and waived in writing the right to go before said judge for the purpose of availing himself to the writ of *habeas corpus*: *Provided*, however, the investigation and hearing under said writ shall be limited to the question of identification, and shall not enter into the merits of facts of the charge, indictment or information accompanying or referred to in the requisition; and if after due hearing, the prisoner or prisoners shall be found to be the parties indicted or informed against and mentioned in the requisition or warrant, then the court shall order and direct the sheriff or other officer as aforesaid to deliver the prisoner or prisoners into the custody of the officer designated in the requisition as the agent upon the part of such State to receive him or them; otherwise to be discharged from custody by the court.

1879, June 4; P. L. 95, Sec. 1.

Section 6. NO PERSON TO BE TAKEN FROM STATE WITHOUT REQUISITION AND HEARING.] It shall not be lawful for any person or officer to take any person or persons out of this commonwealth, upon the ground that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings afore described; and any person or persons who shall arrest or procure the arrest of any citizen, inhabitant or temporary resident of this commonwealth, for the purpose of taking or sending him to another State, without a requisition first had and obtained, accompanied by a certified copy of the indictment or information, and without a warrant issued by or under the direction of the governor of this commonwealth, served by the sheriff or his deputy, and without first taking him before a judge of a court of

record, as aforesaid, shall be guilty of a misdemeanor, and upon conviction be sentenced to one year imprisonment.

1878, May 24; P. L. 137, Sec. 3.

Section 7. VIOLATION OF ACT BY SHERIFF A MISDEMEANOR IN OFFICE.] Any violation of this act, on the part of the sheriff or his deputy, or other officer, as aforesaid, shall be deemed a misdemeanor in office.

1878, May 24; P. L. 137, Sec. 4.

Section 8. ACT NOT TO PREVENT ARREST OF FUGITIVE ON INFORMATION OF OFFENSE, AND WARRANT.] Nothing in this act shall be construed to prevent the sheriff of any county, or chief of police of any city, or other person, to cause the arrest of any person or persons, upon information of the offense or crime committed in another State, and that a warrant has there been issued for the arrest of the said party or parties, or has there been indicted: *Provided*, the officers of any town, city or county, or authorities of such other State or Territory, shall procure a requisition and have the same presented to the governor of this commonwealth, within ninety days after the arrest shall have been made; and the prisoner or prisoners, upon being arrested or detained, shall be brought before a court or judge, in the manner and for the purpose in the second section of this act: *Provided*, such person shall not be committed or held to bail for a longer period than ninety days exclusive of the day of arrest, at the expiration of which time, if the sheriff has not received the requisition or warrant from the governor of this commonwealth, then the person or persons so arrested and detained shall be discharged from custody.

1879, June 4th, P. L. 95 Sec. 1.

XXXVII. RHODE ISLAND.

(From the General Laws of Rhode Island, 1909, Title 37, Chapter 355, Sections 1 to 9, pages 1312, 1313 and 1314.)

FUGITIVES FROM JUSTICE.

Section 1. WARRANT OF ANY COURT TO ARREST A FUGITIVE, WHEN AND UPON WHAT COMPLAINT TO BE ISSUED.] Whenever any person shall be found within this State charged with an offense committed in any other State or Territory and be liable by the Constitution and laws of the United States to be delivered over upon the demand of any executive of any other State or Territory, any court authorized to issue warrants in criminal cases may, upon complaint under oath, setting forth the crime or offense and such other matters as are necessary to bring the case within the provisions of law, issue his warrant to bring the person so charged before the same or some other court within the State, to answer such complaint as in other cases.

Section 2. OF EXAMINATION, AND PROCEEDINGS IN CASE OF PROBABLE GUILT.] If upon the examination of any person so charged, it shall appear that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the executive of this State, he shall, if charged with an offense bailable by such magistrate, when committed within this State, be required to recognize in a reasonable sum with sufficient sureties to appear before such court at some future day, allowing a reasonable time to obtain a warrant from the executive and to abide the order of such magistrate on such complaint.

Section 3. ACCUSED TO RECOGNIZE OR BE COMMITTED.] If such person shall not so recognize, he shall be committed to jail and be there detained until he gives such recognizance or until such day.

Section 4. PROCEEDINGS ON DEFAULT OF RECOGNIZANCE.] If he shall recognize and shall fail to appear according

to the conditions of his recognizance, he shall be defaulted, and like proceedings shall be had as in case of other recognizances entered into before a magistrate.

Section 5. FUGITIVE, BY WHOM TO BE BAILED. If such person shall be charged with an offense not bailable by such court when committed within this State, he shall be committed to prison and there detained until the day appointed for his appearance before such court; but in such case the said person shall be bailable in the same manner as he would be if such offense had been committed in this State.

Section 6. WHEN ENTITLED TO BE DISCHARGED, UNLESS DEMANDED; TO BE TAKEN ON EXECUTIVE WARRANT.] If the person so recognized or committed shall appear before such court upon the day appointed, he shall be discharged unless he shall be demanded by some person authorized by a warrant of the executive to receive him: *Provided*, that whether such person so charged be recognized, committed or discharged, any person authorized by a warrant from the executive of this State may at all times take him in custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Section 7. TO PROCURE WARRANT, RECOGNIZANCE MUST BE GIVEN.] No warrant shall be issued in pursuance of the provisions of section one of this chapter until the complainant shall have given recognizance, with surety, in such sum as the court shall approve and direct, to pay all the costs that may accrue thereon, including the board of the person complained of, if committed to jail, nor shall any such warrant supersede any arrest, either on civil or criminal process theretofore made, nor shall any arrest, either on civil or criminal process heretofore made, supersede any arrest made on any such warrant or on any warrant issued by the executive of this State in such cases.

Section 8. OFFICERS OF ADJOINING STATES SECURED IN TRANSIT THROUGH THIS STATE WITH PRISONERS, ETC.] Sheriffs, deputy-sheriffs, constables and other officers of

the adjoining States, with their assistants, in the legal execution of any writ, warrant or other process issuing from and returnable to courts in their respective States, shall have full liberty, power and authority to pass and repass and also to convey such persons or things as they may legally have in their custody by virtue of any writ or warrant, in or by any of the roads or ways laying in or leading through any of the towns or lands of this State, in as full, free and ample manner as the officers of justice of this State do use and exercise in the discharge of their duty and office.

Section 9. PENALTY FOR OBSTRUCTING SUCH OFFICERS.] Any person who shall obstruct any such officer of any of the United States in such execution of his office, while he is passing through any of the lands or roads of this State, shall be subject to the same pains and penalties as persons would by law be subject to for obstructing similar officers of justice of this State in the due execution of their office.

XXXVIII. SOUTH CAROLINA.

(From the Code of Laws of South Carolina, 1912, Vol. 2, Criminal Code, Title 1, Chapter 1, Sections 7 and 8, Page 217.)

Section 7. OFFICERS MAY ISSUE WARRANTS FOR FUGITIVES CHARGED WITH CRIME—PROCEEDINGS.] Any officer in the State authorized by law to issue warrants for the arrest of persons charged with crime shall, on satisfactory information laid before him under the oath of any credible person, that any fugitive in the State has committed, out of the State, and within any other State, any offense which by the law of the State in which the offense was committed is punishable, either capitally or by imprisonment for one year or upwards, in any State prison, shall have full power and authority, and is hereby re-

quired, to issue a warrant for said fugitive, and commit him to any jail within the State for the space of twenty days, unless sooner demanded by the public authorities of the State wherein the offense may have been committed, agreeable to the act of Congress in that case made and provided; if no demand be made within the time, the said fugitive shall be liberated, unless sufficient cause be shown to the contrary: *Provided*, that nothing herein contained shall be construed to deprive any person so arrested of the right to release on bail as in cases of similar character of offenses against the laws of this State.

(2.) TO KEEP RECORD AND TRANSMIT TO GOVERNOR.] Every officer committing any person under this section shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the governor of this State for such action as he may deem fit therein under the laws.

(3.) GOVERNOR TO INFORM GOVERNOR OF FOREIGN STATE.] The governor of this State shall immediately inform the governor of the State in which the crime is alleged to have been committed of the proceedings had in such case.

(4.) SHERIFF AND JAILER TO SURRENDER FUGITIVE UNDER ORDER OF GOVERNOR.] Every sheriff or jailer, in whose custody any person committed under this section shall be, upon the order of the governor of the State, shall surrender him to the person named in said order for that purpose.

When felony committed fugitive may be arrested without warrant. *State v. Anderson*, (1833), 1 Hill 327; *State v. Whittle*, (1900), 59 S. C. 297, 37 S. E. 293.

Section 8. AGENTS APPOINTED BY THE GOVERNOR TO RECEIVE \$3 A DAY AND EXPENSES.] In all cases of requisition for the delivery of fugitives from justice the agents appointed by the governor to bring such fugitives into this State shall receive in compensation for their services the sum of three dollars per day for the time actually

employed, and shall be reimbursed their expenses actually and necessarily incurred in the performance of their duties.

APPROVAL OF ACCOUNTS—PAYMENT.] Upon presentation to the governor of the accounts of such agents, itemized and duly verified by their affidavits thereto annexed, the governor, if he approves the same as correct, shall endorse his approval thereon, and upon presentation of said accounts, so endorsed, to the controller general, he shall draw his warrants on the State treasurer for the amount thereof, payable out of the regular contingent fund of the governor.

XXXIX. SOUTH DAKOTA.

(From The Compiled Laws, (1910), State of South Dakota, Vol. 2, Chapter 13, Sections 615 to 628, pages 737 and 738.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 615. GOVERNOR MAY OFFER REWARD FOR CRIMINAL.] The governor may offer a reward not exceeding one thousand dollars payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the State Prison or,

2. Of any person who has committed, or is charged with the commission of an offense punishable with death.

Section 616. DELIVERY OF CRIMINALS ON REQUISITION.] A person charged in any State of the United States with treason, felony or other crime, who flees from justice and is found in this State, must, on demand of the executive authority of the State, from which he fled, be delivered up by the governor of this State, to be removed to the State having jurisdiction of the crime.

Section 617. MAGISTRATE TO ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of

the person so charged, who flees from justice and is found in this State.

Section 618. PROCEEDINGS FOR ARREST AND COMMITMENT.] The proceedings for the arrest and commitment of a person so charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 619. PERSONS CHARGED MAY BE COMMITTED FOR A REASONABLE TIME.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of this State, on the requisition on the executive authority of the State in which he committed the offense, unless he gives bail as approved in the next section, or until he is legally discharged.

Section 620. ADMISSION TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

Section 621. NOTICE TO STATE'S ATTORNEY.] Immediately upon the arrest of the person so charged, the magistrate must give notice thereof to the State's attorney of the county.

Section 622. DUTY OF THE STATE'S ATTORNEY.] The State's attorney of the county must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or the presiding judge of the court of the city or county within the State having

jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

Section 623. PERSON DISCHARGED, WHEN.] The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 624. THE MAGISTRATE TO MAKE RETURN OF PROCEEDINGS.] The magistrate must return his proceedings to the next circuit court of the county, which thereupon must inquire into the cause of the arrest and detention of the person charged, and if in custody, or the time of his arrest has elapsed, it may discharge him from detention, or may order his undertaking or bail cancelled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Section 625. FUGITIVE GRANTED TWENTY-FOUR HOURS.] Any person who is arrested within this State, by virtue of a warrant issued by the governor of this State, upon the requisition of the governor of any other State or Territory, as a fugitive from justice, under the laws of the United States, shall not be delivered to the agent of such State or Territory until notified of the demand made for his surrender, and given twenty-four hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of *habeas corpus*, the prisoner shall be forthwith taken to the nearest judge of the circuit court, and ample time given to sue out such writ, such time to be determined by the judge of the circuit court.

Section 626. PENALTY FOR UNLAWFUL DELIVERY OF FUGITIVE.] Any officer who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section, shall be deemed guilty of a misdemeanor.

Section 627. FOREIGN ARRESTS. COMPENSATION.] Whenever the governor of this State shall demand from

the executive authority of a State or Territory of the United States, or of a foreign government, the surrender to the authorities of this State of a fugitive from justice, the accounts of the person employed by him for that purpose must be paid out of the county treasury of the county in which the crime is alleged to have been committed, and to which said fugitive is returned for trial.

Provided, that the persons employed by virtue of this section shall receive for their services three dollars *per diem* and actual expenses while actually and necessarily employed, and no more.

Section 628. NO COMPENSATION FOR PROCURING DEMAND FROM GOVERNOR.] That no compensation, fee or reward of any kind shall be paid to or received by any person for service rendered or expense incurred in procuring from the governor the demand mentioned in the preceding section for the arrest or the surrender of the fugitive, or for conveying him to the county in which the alleged crime, for which he is arrested, is claimed to have been committed, except as provided in the preceding section.

XL. TENNESSEE.

(From Code of the State of Tennessee, 1896, Title 5, Chapter 5, Sections 7318 to 7320, and 7321 to 7331, pages 1733, 1734 and 1735.)

FUGITIVES FROM JUSTICE.

7318 (5340) 6185. GOVERNOR MAY APPOINT AGENT TO DEMAND FUGITIVE.] The governor may appoint an agent to demand of the executive authority of any other State or Territory, any fugitive from justice, or other person charged with treason, felony, or other crime in this State. 1847-48, ch. 121.

7319 (5341) 6186. WHO MAY EMPLOY GUARD.] Such agent may, if necessary, employ a sufficient guard or es-

cort to bring such criminal to this State, and contract other expenses absolutely required in performing the duties of the agency.

Ib.

7320 (5342) 6187. EXPENSE AND COMPENSATION, HOW PAID.] The expenses thus necessarily incurred, and reasonable compensation to such agent, guard, and escort, shall be paid by the treasurer, upon the warrant of the governor.

Ib.

7321 (5343) 6188. GOVERNOR MAY ISSUE WARRANT FOR FUGITIVE FROM ANOTHER STATE.] Whenever a demand is made upon the governor of this State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery of any person charged in such State or Territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws of the United States or of this State, he shall issue a warrant for the apprehension of such person.

Iowa code of 1851, sec. 3283.

7322 (5344) 6189. SUBSTANCE OF WARRANT.] The warrant shall be under the seal of the State, and authorize the agent who makes the demand, either forthwith or at such time as may be therein designated, to take and transport such person to the line of this State at the expense of such agent, and may also require all peace officers to afford needful assistance in the execution thereof.

Ib.

7323 (5345) 6190. MAGISTRATE MAY ISSUE WARRANT, WHEN.] If any person be found in this State charged with any crime committed in any other State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor thereof, any magistrate may, upon complaint, on oath, setting forth the offense and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to arrest such person.

Id., sec. 3284.

7324 (5346) 6191. PROCEEDINGS THEREON.] If, upon examination, it appear that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the governor, he shall, if not charged with an offense punished capitally by the laws of the State in which it was committed, be required to give bail by bond or undertaking, with sufficient security, in a reasonable sum, to appear before such magistrate at a future day specified, allowing sufficient time to obtain the warrant from the governor, and abide the order of such magistrate in the premises.

Id., sec. 3285.

7325 (5347) 6192. SAME.] If such person does not give bail, or if he is charged with a capital offense, he shall be committed to prison, and there detained until such day, in like manner as if the offense charged had been committed within this State.

Id., sec. 3286.

7326 (5348) 6193. DEFENDANT DISCHARGED, WHEN.] If such person appear before the magistrate upon the day specified, he shall be discharged unless he is demanded under warrant of the governor, or unless the magistrate see good cause to commit him to some other day, or to require him to give bail for his appearance at such day, to await a warrant from the governor.

Id., sec. 3287.

7327 (5349) 6194. FAILURE TO APPEAR.] A failure of such person to attend before the magistrate at the time and place mentioned in the bond or undertaking, is a forfeiture thereof, and the same should be indorsed "forfeited" by the magistrate, and returned to the next criminal or circuit court, as the case may be, where such proceedings shall be had as in the case of bonds or undertakings forfeited in that court.

Id., sec. 3288.

7328 (5350) 6195. ARREST UNDER GOVERNOR'S WARRANT.] Whether the person so charged be bound to appear, be committed or discharged, any person authorized

by the warrant of the governor may at any time take him into custody, and such apprehension is a discharge of the bond or undertaking, if there be one.

Iowa code of 1851, sec. 3289.

7329 (5351) 6196. COSTS AND CHARGES.] The complainant in any such case is answerable for all costs and charges, and for the support in prison of any person so committed, and the magistrate, before issuing his warrant, shall require him to give security for the payment of all such costs, or may require them to be paid in advance to the officers entitled.

Id., sec. 3290.

7330 (5352) 6197. JAIL FEES TO BE PAID IN ADVANCE.] And no jailer is bound to receive any person committed under a warrant issued by virtue of the provisions of this chapter until his jail fees for the time specified in such warrant are paid in advance.

7331 (5353) 6198. SUCH PERSON TO BE RECEIVED IN JAILS OF STATE.] But the officer or person executing such warrant may, when necessary, by paying the jail fees in advance, or otherwise securing them to the satisfaction of the jailer, confine the prisoner arrested by him in the jail of any county through which he may pass, and the jailer, in such case, shall receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route.

XLI. TEXAS.

(From Vernon's Criminal Statutes of Texas, 1916, Vol. 2, Title 14, Articles 1088 to 1105a, pages 950 to 955.)

FUGITIVES FROM JUSTICE.

Art. 1088. (1051) FUGITIVE FROM JUSTICE DELIVERED UP, WHEN.] A person charged in any other State or Territory of the United States with treason, felony or other crime, who shall flee from justice and be found in

this State, shall, on demand of the executive authority of the State or Territory from which he fled, be delivered up, to be removed to the State or Territory having jurisdiction of the crime.

C. C. 878.

Art. 1089. (1052) JUDICIAL AND PEACE OFFICERS SHALL AID IN THE ARREST OF.] It is declared to be the duty of all judicial and peace officers of the State to give aid in the arrest and detention of a fugitive from any other State or Territory, that he may be held subject to a requisition by the governor of the State or Territory from which he may have escaped.

O. C. 879.

Art. 1090. (1053) MAGISTRATE SHALL ISSUE WARRANT FOR ARREST OF FUGITIVE, WHEN.] Whenever, a complaint, on oath, is made to a magistrate that any person, within his jurisdiction, is a fugitive from justice from another State or Territory, it is his duty to issue a warrant of arrest for the apprehension of the person accused.

O. C. 882.

Art. 1091. (1054) COMPLAINT SHALL BE SUFFICIENT, IF IT RECITES, ETC.] The complaint shall be sufficient if it recites:

1. The name of the person accused.
2. The State or Territory from which he has fled.
3. The offense committed by the accused.
4. That he has fled to this State from the State or Territory where the offense was committed.
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State or Territory from which he fled.

O. C. 883.

Art. 1092. (1055) WARRANT OF ARREST FROM MAGISTRATE.] The warrant of a magistrate to arrest a fugitive from justice shall direct a peace officer to apprehend the person accused, and bring him before such magistrate.

Art. 1093. (1056) SHALL REQUIRE BAIL OR COMMIT ACCUSED, WHEN.] When the person accused is brought before the magistrate he shall hear proof, and, if satisfied

that the defendant is charged in another State or Territory with the offense named in the complaint, he shall require of him bail, with good and sufficient security, in such amount as such magistrate may deem reasonable, to appear before such magistrate at a specified time; and, in default of such bail, he may commit the defendant to jail, to await a requisition from the governor of the State or Territory from which he fled.

O. C. 885.

Art. 1094. (1057) CERTIFIED TRANSCRIPT OF INDICTMENT, EVIDENCE.] A properly certified transcript of an indictment against the accused shall be evidence to show that he is charged with the crime alleged.

O. C. 886.

Art. 1095. (1058) PERSON ARRESTED SHALL NOT BE COMMITTED, OR ETC.] A person arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

O. C. 887.

Art. 1096. (1059) MAGISTRATE SHALL NOTIFY SECRETARY OF STATE, ETC.] The magistrate by whose authority a fugitive from justice has been held to bail or committed shall immediately notify the secretary of State of the fact, stating in such notice the name of such fugitive, the State or Territory from which he is a fugitive, the crime with which he is charged, and the date when he was committed or held to bail. Such notice may be forwarded either through the mail or by telegraph.

O. C. 888.

Art. 1097. (1060) SHALL ALSO NOTIFY DISTRICT OR COUNTY ATTORNEY, WHO SHALL NOTIFY ETC.] The magistrate shall also immediately notify the district or county attorney of his county of the facts of the case, who shall forthwith give notice of such facts to the executive authority of the State or Territory from which the accused is charged to have fled.

Art. 1098. (1061) SECRETARY OF STATE SHALL COMMUNICATE INFORMATION, ETC.] The secretary of State, upon receiving information as provided in article 1096, shall

forthwith communicate such information by telegraph, when practicable, or, if not practicable, by mail, to the executive authority of the proper State or Territory.

Art. 1099. (1062) ACCUSED SHALL BE DISCHARGED, WHEN.] If the accused is not arrested under a warrant from the governor of this State before the expiration of ninety days from the day of his commitment or the date of the bail bond, he shall be discharged.

O. C. 889.

Art. 1100. (1063) SHALL NOT BE ARRESTED A SECOND TIME, EXCEPT, ETC.] A person who shall have once been arrested under the provisions of the preceding article, or by *habeas corpus*, shall not be again arrested upon a charge of the same offense, except by a warrant from the governor of this State.

O. C. 890.

Art. 1101. (1064) GOVERNOR OF THIS STATE CAN DEMAND FUGITIVE FROM JUSTICE, HOW.] Whenever the governor of this State may think proper to demand a person who has committed an offense in this State and has fled to another State or Territory, he may commission any suitable person to take such requisition; and the accused person, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense.

O. C. 881.

Art. 1102 (1065) REASONABLE PAY TO PERSON COMMISSIONED, ETC.] The person commissioned by the governor to bear a requisition for a fugitive from justice to another State or Territory shall be paid out of the State treasury a reasonable compensation for his services, to be paid upon the certificate of the governor, specifying the services rendered and the amount allowed therefor.

O. C. 881.

Art. 1103. (1066) GOVERNOR MAY OFFER A REWARD, WHEN.] The governor may, whenever he deems it proper, offer a reward for the apprehension of any person accused of a felony in this State, and who is evading an arrest.

Art. 1104. (1067) SHALL BE PUBLISHED, How.] When the governor offers a reward, he shall cause the same to be published in such manner, as, in his judgment, will be most likely to effect the arrest of the accused.

Art. 1105. (1068) REWARD SHALL BE PAID BY STATE.] The person who may become entitled to such reward shall be paid the same out of the State treasury upon the certificate of the governor, stating the amount thereof, and that such person is entitled to receive the same, and the facts which so entitle such person to receive it.

Art. 1105a. LIST OF FUGITIVES TO BE SENT TO ADJUTANT GENERAL.] It shall be the duty of each sheriff in this State, upon the close of any regular term of the district court in his county, or within thirty days thereafter, to make out and forward by mail to the adjutant general of this State a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each of such fugitives, with a discription giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarities in person, speech, manner or gait that may serve to identify such fugitive, so far as the sheriff may be able to give them, and shall state the offense with which such person is charged. The adjutant general shall prescribe, have printed and forward to the sheriffs of the several counties the necessary blanks upon which are to be made the lists herein required.

Act 1887, p. 44, sec. 1; Amend. 1895, Sen. Jour. No. 97, p. 484.

XLII. UTAH.

(From the Compiled Laws of the State of Utah, 1907. Chapter 57, Code of Criminal Procedure, Sections 5103 to 5117, pages 1469 to 1471.)

Section 5103. REWARDS FOR APPREHENSION OF FUGITIVES.] The governor may offer a reward not exceeding

\$1,000.00, payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the State Prison, or,

2. Of any person who has committed, or is charged with the commission of an offense punishable with death, or,

3. Of any person who is charged with having absconded with or embezzled, or unlawfully taken and carried away any funds, assets or property of any State or National bank, doing business in this State.

Section 5104. DELIVERY OF FUGITIVE UPON REQUISITION.] A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this State, shall, on demand of the executive authority of the State or Territory from which he shall have fled, be delivered over by the governor of this State, to be removed to the State or Territory having jurisdiction of the crime.

Section 5105. MAGISTRATE MAY ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this State.

Section 5106. PROCEEDINGS FOR ARREST AND COMMITMENT OF FUGITIVE.] The proceedings for the arrest and commitment of a person so charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 5107. COMMITMENT OF ACCUSED TO AWAIT REQUISITION.] If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may

deem reasonable, to enable the arrest of the accused fugitive under the warrant of the executive authority of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as approved in next section or until he is legally discharged.

Section 5108. *ID. BAIL.*] The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

Section 5109. *NOTICE TO DISTRICT ATTORNEY OF ARREST.*] Immediately upon the arrest of the person so charged, the magistrate must give notice thereof to the district attorney of the county.

Section 5110. *DUTY OF DISTRICT ATTORNEY.*] The district attorney of the county must immediately thereafter give notice to the executive authority of the State or to the prosecuting officer or the presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

Section 5111. *DISCHARGE OF ACCUSED FOR LACK OF PROSECUTION.*] The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Section 5112. *RETURN OF MAGISTRATE. PROCEDURE IN THE DISTRICT COURT.*] The magistrate must return his proceedings to the next district court of the county, which thereupon must inquire into the cause of the arrest and detention of the person charged, and if in custody, or the time of his arrest has elapsed, it may discharge him from detention, or may order his undertaking or bail canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Section 5113. FUGITIVE GIVEN TWENTY-FOUR HOURS TO DEMAND COUNSEL. HABEAS CORPUS.] Any person who is arrested within this State, by virtue of a warrant issued by the governor of this State, upon the requisition of the governor of any other State or Territory, as a fugitive from justice, under the laws of the United States, shall not be delivered to the agent of such State or Territory until notified of the demand made for his surrender, and given twenty-four hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of *habeas corpus*, the prisoner shall be forthwith taken to the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the judge of the district court.

Section 5114. ID. PENALTY FOR VIOLATION.] Any officer who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section, shall be deemed guilty of a misdemeanor.

Section 5115. FUGITIVES FROM THIS STATE. DEMAND. COSTS.] The governor of this State may in any case authorized by the Constitution and laws of the United States, demand of the executive authority of any other State or Territory within the United States, any fugitive from justice or any person charged with treason, felony, or other crimes in this State, and appoint agents to receive such persons for and on behalf of this State. The account of any such agent or agents employed for such purpose shall in cases of fugitive and felony be paid by the State, and for other crime be audited by the board of county commissioners of the county in which the crime was committed, and paid out of such county treasury; provided, that only the sheriff of said county, or one of his deputies, or a constable or policeman thereof, shall be appointed such agent, and such agent shall not be paid more than his expenses and a *per diem* of three dollars while in actual discharge of his duty.

Section 5116. ID. NO REWARD TO PUBLIC OFFICER.] No compensation, fee or reward of any kind, can be paid to or received by any public officer of this State, for a service rendered or incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him herein, except as provided in section 5115.

Section 5117. ID. VIOLATION A MISDEMEANOR.] A violation of the last section is a misdemeanor.

XLIII. VERMONT.

(From the Public Statutes of Vermont, 1906, Title 12, Chapter 116, Sections 2402 to 2411, pages 501, 502 and 503.)

EXTRADITION.

Section 2402. PERSON ARRESTED FOR EXTRADITION TO HAVE TIME TO BRING HABEAS CORPUS.] A person arrested in this State by virtue of a warrant issued by the governor upon a requisition of the governor of another State, as a fugitive from justice under the laws of the United States, shall not be delivered to the agent of such State, until notified of the demand made for his surrender, and given opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer making the arrest within twenty-four hours after being notified of the demand made for his surrender.

Section 2403. PENALTY FOR NOT COMPLYING WITH PRECEDING SECTION.] An officer who delivers said person to said agent for extradition without having complied with the provisions of the preceding section shall be fined not more than five hundred dollars.

Section 2404. CRIMINAL FLEEING TO BRITISH TERRITORY. JUSTICE TO TAKE DEPOSITIONS.] If a justice has reason to suspect that the crime of murder, or assault

with intent to commit murder, or piracy, arson, robbery, forgery or the utterance of forged paper, has been committed within the county in which said justice has jurisdiction, and that the person who committed the crime is in the Territory of Great Britain or the dependencies thereof, he shall summon before him a person having knowledge respecting the commission of such crime, who shall thereupon make his deposition in writing before said justice, of the facts within his knowledge as to the commission of such crime; and such deposition shall be kept on file in the office of said justice.

Section 2405. SAME; JUSTICE TO ISSUE WARRANT.] If, upon the taking of such depositions, the justice is of the opinion that the same contain sufficient ground to warrant the apprehension and detention for trial of the person suspected of such crime, he shall issue his warrant for the apprehension of the suspected person, in the same form as in complaints made by town grand jurors.

Section 2406. PROCEEDINGS.] Proceedings in such cases may also be had in the manner heretofore provided by law.

Section 2407. RECEIVING PERSON FROM OFFICER OF ANOTHER STATE.] A sheriff shall receive a person charged with crime, delivered to him by an officer of another State having a warrant from proper authority for delivering said person, and shall forthwith take him before a justice for examination.

TRANSPORTATION OF NEW YORK PRISONERS.

Section 2408. BY OFFICERS OF NEW YORK THROUGH THIS STATE.] The authorities of the State of New York shall have the same power and authority to detain and transport through the Territory of this State persons convicted of offenses and sentenced to be confined in a penitentiary in the State of New York, which they have to detain and transport them in such State.

TRANSPORTATION OF NEW HAMPSHIRE PRISONERS.

Section 2409. BY OFFICERS OF NEW HAMPSHIRE THROUGH THIS STATE.] The officers of the State of New Hampshire shall have the same power and authority to detain and transport through this State prisoners arrested in New Hampshire and held for trial or commitment by a court of record in New Hampshire, which they have to detain and transport them in that State.

SERVICE OF CRIMINAL RETURNABLE IN MASSACHUSETTS.

Section 2410. BY MASSACHUSETTS OFFICER.] Jurisdiction to serve criminal process returnable to a court in the commonwealth of Massachusetts is hereby given to officers who, by laws of such commonwealth, may serve such process, over a building situated partly in such commonwealth and partly in this State.

Section 2411. WHEN PRECEDING SECTION TAKES EFFECT.] The preceding section shall take effect when the commonwealth of Massachusetts has given like jurisdiction to similar officers in this State to serve criminal process returnable to a court in Vermont.

XLIV. VIRGINIA.

(From Code of Virginia, 1904, Vol. 2, Title 56, Chapter 205, Sections 4188 to 4196, pages 2183, 2184 and 2185.)

FUGITIVES FROM JUSTICE, AND THE GOVERNOR'S AUTHORITY
IN CRIMINAL CASES.

Section 4188. GOVERNOR TO SURRENDER FUGITIVE FROM FOREIGN NATION ON REQUISITION OF PRESIDENT OF UNITED STATES.] The governor shall, whenever required by the executive authority of the United States, pursuant to the constitution and laws thereof, deliver over to justice any person found within the State, who is charged with hav-

ing committed any crime without the jurisdiction of the United States. (1877-8, p. 372.)

Section 4189. DISCRETION IN GOVERNOR TO DELIVER FUGITIVE WITHOUT SUCH REQUISITION; WHEN DELIVERY MADE; WHAT EVIDENCE REQUIRED; HOW EXPENSE DEFRAYED.] The governor, though not so required, may, in his discretion, deliver over to justice any person found within the State, who is charged with having committed, without the jurisdiction of the United States, any crime, except treason, which by the laws of this State, if committed therein, is punishable with death or confinement in the penitentiary; such delivery shall only be made on the requisition of the duly authorized officers or agents of the government, within the jurisdiction of which the crime is charged to have been committed; and the governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify his apprehension and commitment for trial had the crime charged been committed within this State. The expense of apprehension and delivery shall be defrayed by those to whom the delivery is made. (1877-8, p. 372.)

Section 4190. SURRENDER OF FUGITIVES FROM OTHER STATES.] Any person charged in another State of this Union with treason, felony, or other crime, who shall flee from justice and be found within this State, shall on demand of the executive authority of the State from which he fled, made in the manner prescribed by the constitution and laws of the United States, be delivered up, according to the said constitution and laws, to be removed to the State having jurisdiction of the crime. (1877-8, p. 373.)

Section 4191. WHEN A JUSTICE MAY ISSUE WARRANT OF ARREST; WHERE OFFICER MAY EXECUTE IT; BEFORE WHOM ACCUSED TO BE BROUGHT.] Whenever any person is found within this State, charged with treason, felony or other crime, committed in any other State, any justice may, upon complaint on oath, or other satisfactory evidence, that such person committed the offense, issue a warrant to bring the person so charged before the same

or some other justice within the State; and the officer, to whom such warrant is directed, may execute the same in any county or corporation in the State, and bring the party, when arrested, before any justice of the same or any other county or corporation. (1877-8, p. 373.)

Section 4192. PROCEEDINGS BEFORE THE JUSTICE AFTER ARREST.] If it shall appear to the justice before whom the person charged is brought, that there is a reasonable cause to believe that the complaint is true, he shall, if he would have been bailable by a justice, in case the offense had been committed in this State, be required to enter into a recognizance with sufficient surety, in a reasonable sum, to appear before the court of the county or corporation of the justice before whom he is brought, at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court; and, if such person do not enter into such recognizance, he shall be committed to jail, and be there detained until such day. The recognizance, if any, shall be returned to the said court without delay; and if the person entering into the recognizance fail to appear according to the condition thereof, his default shall be entered of record, and the like proceedings be had as in the case of other recognizances entered into before a justice; but if such person would not have been bailable by a justice, in case the offense had been committed in this State, he shall be committed to jail, and there detained until the day so appointed for his appearance before the court. (1877-8, p. 373.)

Section 4193. THE JUSTICE TO INFORM GOVERNOR; HIS DUTY.] The justice, by whom such person is so recognized or committed, shall immediately, by letter, apprise the governor of the fact, who shall thereupon communicate the same to the executive of the State, where the crime is charged to have been committed. (1877-8, p. 373.)

Section 4194. IF ACCUSED APPEAR BEFORE THE COURT AS ORDERED, HE SHALL BE DISCHARGED, UNLESS, &c.; WHEN AND BY WHOM HE MAY BE RETAKEN INTO CUSTODY.] If the

person so recognized or committed, shall appear before the court on the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the court see cause to commit him, or to require him to enter into a new recognizance for his appearance on some other day; and if, when ordered, he do not enter into such recognizance, he shall be committed and detained as before. But whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape. (1877-8, p. 373.)

Section 4195. COMPLAINANT LIABLE FOR COSTS, &c.; JAILOR, IF NOT PAID, MAY DISCHARGE ACCUSED.] The complainant in such case shall be answerable for all the actual costs and charges, and for the support, in jail, of any person so committed, to be paid in the same manner as by a creditor for his debtor committed on execution; and if the charge for his support in jail shall not be so paid, the jailor may discharge him in like manner as if he had been committed for debt on an execution. (1877-8, p. 374.)

Section 4196. WHEN FUGITIVE TO BE DETAINED HERE.] No person under prosecution for any offense, alleged to be committed within this State, shall be delivered up to the executive authority of another State, or of the United States, until such prosecution shall have been determined, and the person prosecuted shall have been punished, if condemned; nor shall any person, under recognizance to appear as a witness in any such prosecution, be so delivered up, until said prosecution be determined. Nor shall any person, who was in custody upon an execution, or upon process in any suit, at the time of his arrest for a crime charged to have been committed without the jurisdiction of this State, be so delivered up, without the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been

paid, or until such person shall be otherwise discharged from such execution or process. (1877-8, p. 374.)

XLV. WASHINGTON.

(From Pierce's Code of the State of Washington, 1912, Title 135, Chapter 79, Sections 943, 971 to 976, pages 768, 769 and 770.)

DEMANDING FUGITIVES FROM JUSTICE.

135. Sec. 943. STATE TO PAY EXPENSE OF FOREIGN GOVERNMENT. Sec. 1.] That the State auditor is hereby authorized to audit and allow all just and legal claims which any foreign government or its officers may have against this State, in accordance with the general fee-bills for like services, for the capture, detention, and keeping of any criminal who has escaped from this State and taken refuge in any foreign jurisdiction, and upon the allowance of any such claim, he shall draw his warrant upon the State treasury therefor; and the State treasurer is hereby required to pay the same out of any funds in the State treasury not otherwise appropriated. (H. C. Sec. 2946.)

135. Sec. 231. AGENTS TO DEMAND FUGITIVES. Sec. 971.] The governor of this State may appoint agents to demand of the executive authority of any State or Territory any fugitive from justice, or any other person charged with felony or any other crime in this State; and whenever an application shall be made to the governor for that purpose the prosecuting attorney, when required by the governor, shall forthwith investigate the ground of such application and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand; but the governor may in any case appoint such agents without requiring the opinion of or any report from the prosecuting attor-

ney, and the accounts of the agents appointed for such purposes shall in all cases be audited by the State auditor and paid from the State treasury. (B. C. Sec. 7015; 2 H. C. Sec. 1387.)

135. Sec. 933. **RENDITION OF FOREIGN FUGITIVE.** Sec. 972. 209.] When a demand shall be made upon the governor of this State by the executive of any State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody or is under recognizance to answer for any offense against the laws of this State or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the State, authorizing the agents who make such demand, either forthwith or at such time as shall be designated by the warrant, to take and transport such person to the line of the State at the expense of such agents, and shall also by such warrant require the civil officers within this State to afford all needful assistance in the execution thereof. (B. C. Sec. 7016; 2 H. C. Sec. 1388.)

135. Sec. 935. **DUTY OF DOMESTIC PEACE OFFICERS.** Sec. 973. 210.] Whenever any person shall be found within this State charged with an offense committed in any State or Territory, and liable by the constitution and laws of the United States, to be delivered on the demand of the executive of such State or Territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the

offense, and such other matters as are necessary to bring the offense within the provisions of law, issue a warrant to bring the person so charged before the same or some other court, or magistrate, so authorized within the State, to answer such complaint as in other cases. (B. C. Sec. 7017; 2 H. C. Sec. 1389.)

135. Sec. 937. FUGITIVE TO BE HELD. Sec. 974. 211.] If, upon the examination of the person charged, it shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain a warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and there be detained until such day, in like manner as if the offense charged had been committed in this State; and if the person so recognizing shall fail to appear according to the conditions of his recognizance, he shall be defaulted, and like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there be detained until the day so appointed for his appearance before the court or magistrate. (B. C. Sec. 7018; 2 H. C. Sec. 1390.)

135. Sec. 939. FUGITIVE DISCHARGED RE-ARREST. Sec. 975. 212.] If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require of him to recognize anew for his appearance at some other day; and, if, when ordered, he shall not so recognize, he shall be committed and be detained as before provided.

Whenever the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance if any, and shall not be deemed an escape. (B. C. Sec. 7019; 2 H. C. Sec. 1391.)

135. Sec. 941. Costs. Sec. 976. 213.] The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody. (B. C. Sec. 7020; 2 H. C. Sec. 1392.)

XLVI. WEST VIRGINIA.

(From Hogg's West Virginia Statutes, 1914, Vol. 1, Chapter 14, Sections 356 to 364, pages 148 to 151.)

356. FUGITIVES FROM FOREIGN NATIONS—DUTY OF GOVERNOR TO DELIVER.] The governor, whenever required by the executive authority of the United States pursuant to the constitution and laws thereof, shall deliver over to justice any person found within this State who shall be charged with having committed any crime without the jurisdiction of the United States. (Code Va. 1860, p. 118; Acts 1882, c. 144.)

357. SAME—WHEN GOVERNOR MAY DELIVER AT DISCRETION—EVIDENCE—EXPENSES.] The governor though not so required, may in his discretion deliver over to justice any person found within this State who shall be charged with having committed without the jurisdiction of the United States, any crime, except treason, which by the laws of this State, if committed therein, would be punishable by death or imprisonment in the penitentiary. The

governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify an indictment against him, had the crime charged been committed in this State. The expense of the apprehension and delivery shall be defrayed by those to whom the delivery is made. (Code Va. 1860, p. 118; Acts 1882, c. 144.)

358. FUGITIVES FROM STATES OR TERRITORIES—POWERS OF GOVERNOR—APPOINTMENT OF EXTRADITION AGENT—EVIDENCE—COMPLAINT OR INDICTMENT—AFFIDAVITS—EXPENSES.] The governor, in any case, authorized by the constitution of the United States, may, on demand, deliver over to the executive of any other State or Territory any person charged therein, with treason, felony, or other crime committed therein, and he may on application appoint an agent to demand of the executive authority of any other State or Territory any offender fleeing from the justice of this State; *Provided*, That such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and that the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process; and also by a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same, such complaint to be accompanied by affidavits to the facts constituting the offense charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require. The governor may pay out of the civil contingent fund any reasonable expenses incurred under this section. (Code Va. 1860, p. 119; Acts 1882, c. 144.)

359. SAME—WARRANT FOR ARREST OF PERSON CHARGED—ISSUANCE—EXECUTION.] Whenever any person shall be found within this State, charged with treason, felony or other crime committed in any other State, any justice may, upon complaint on oath, or other satisfactory evi-

dence that such person committed the offense, issue a warrant to bring the person so charged before the same, or some other justice within the State; and the officer to whom such warrant may be directed may execute the same in any county in the State, and bring the party, when arrested, before any justice of the same or any other county. (Code Va. 1860, p. 119; Acts 1882, c. 144.)

360. SAME—RECOGNIZANCE OF PERSON CHARGED—COMMITMENT—FAILURE TO APPEAR—FORFEITURE OF RECOGNIZANCE.] If it shall appear to the justice before whom the person charged may be brought that there is reasonable cause to believe that the complaint is true, he shall if he would have been bailable by a justice, in case the offense had been committed in this State, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before the circuit court of the county at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court; and if such person shall not so recognize he shall be committed to prison, and be there detained until such day. The recognizance, if any, shall be returned to the said court without delay; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceeding shall be had, as in the case of other recognizances entered into before a justice; but if such person would not have been bailable by a justice in case the offense had been committed in this State, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court. (Code Va. 1860, p. 119; Acts 1882, c. 144.)

361. SAME—DUTY OF JUSTICE TAKING RECOGNIZANCE.] The justice by whom such person may be so recognized or committed, shall immediately, by letter, apprise the governor of the fact, who shall thereupon communicate the same to the executive of the State where the crime is charged to have been committed. (Code Va. 1860, p. 119; Acts 1882, c. 144.)

362. SAME—APPEARANCE BY PERSON RECOGNIZED—DISCHARGE—COMMITMENT—NEW RECOGNIZANCE—DISCHARGE—COMMITMENT—NEW RECOGNIZANCE—DISCHARGE OF RECOGNIZANCE.] If the person so recognized or committed shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him or unless the court shall see cause to commit him or to require him to recognize anew for his appearance at some other day; and if when ordered, he shall not so recognize, he shall be committed and detained as before. But whether the person, so charged shall be recognized, committed or discharged, any person authorized by the warrant of the governor may at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape. (Code Va. 1860, p. 119; Acts 1882, c. 144.)

363. SAME—LIABILITY OF COMPLAINANT FOR COSTS—CHARGES AND SUPPORT OF PERSON ARRESTED.] The complainant in each case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed; and if the charge for his support in prison shall not be paid when demanded, the jailor may discharge such person from prison. (Code Va. 1860, p. 120; Acts 1882, c. 144.)

364. SAME—DETENTION OF FUGITIVES UNDER PROSECUTION FOR OFFENSE COMMITTED IN STATE.] No person under prosecution for any offense alleged to be committed within this State shall be delivered up to the executive authority of another State, or of the United States, until such prosecution shall have been determined, and the person prosecuted shall have been punished, if condemned; nor shall any person under recognizance to appear as a witness in any such prosecution be so delivered up until said prosecution shall be determined. Nor shall any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this State, be so delivered up with-

out the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been paid, or until such person shall be otherwise discharged from such execution or process. (Code Va. 1860, p. 120; Acts 1882, c. 144.)

XLVII. WISCONSIN.

(From the Wisconsin Statutes, 1915, Chapter 37, Sections 731a and 731b, pages 471 and 472; Chapter 198, Sections 4843 to 4854, pages 2243 to 2245.)

FUGITIVES FROM JUSTICE AND PROCEEDINGS THEREON.

Section 731a. PER DIEM AND EXPENSES ON REQUISITION.] In all cases where by the laws of this State the governor thereof is authorized to demand of the executive authority of any other State, any fugitive from justice or any person charged with felony or any other crime in this State, and appoint an agent to receive the same, and such fugitive from justice or person charged with felony or other crime, is apprehended in any other State, by the sheriff or deputy sheriff of the county of this State, where the warrant for such fugitive from justice is properly issued, or such felony or other crime committed, and such fugitive from justice voluntarily returns with said sheriff to this State without requisition, such sheriff shall be entitled to the same fees as an agent of the governor appointed to receive such fugitive in cases of requisition, namely eight dollars per day for the time necessarily expended in traveling to, apprehending and returning with such fugitive, and his actual and necessary expenses for such time, which compensation and expenses shall be allowed by the county board of such county upon the presentation thereto of an itemized and verified account, stating the number of days he was engaged, the number of miles traveled and each item of expense incurred in rendering such services, including the

transportation and board of such fugitive from justice. No allowance whatever shall be made him as mileage. (1901 c. 126 s. 1; Supl. 1906 s. 731a; 1907 c. 118.)

Section 731b. NO FEE UNLESS APPREHENSION IS AUTHORIZED BY DISTRICT ATTORNEY.] No sheriff of this State shall receive the compensation for the apprehension and voluntary return of fugitives from justice as provided in section 731a, unless such apprehension shall have been duly authorized in writing by the district attorney or by the county judge of the county wherein the felony or other crime was committed, which written authority shall further certify that the ends of justice will be subserved by the apprehension and return of such fugitive, and such certificate shall be by such sheriff attached to and filed with his itemized account of such services. This section shall not apply to counties having a population of three hundred thousand or more. (1901 c. 126 s. 2; Supl. 1906 s. 731b; 1907 c. 118; 1911 c. 663 s. 69; 1915 c. 259.)

Section 4843. INVESTIGATION OF DEMAND; AGENT'S COMPENSATION.] The governor of this State may, in any case authorized by the Constitution and laws of the United States, demand of the executive authority of any other State or Territory any fugitive from justice or any person charged with felony or any other crime in this State and appoint agents to receive the same; and whenever an application shall be made to the governor for that purpose the district attorney or any other prosecuting officer of the State, when required by the governor, shall forthwith investigate the grounds of such application and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand; but the governor may in any case appoint such agents without requiring the opinion of or any report from the district attorney; and the accounts of the agents appointed for such purpose shall in all cases be audited by the county board of supervisors of the county from which such fugitive may have fled and paid

from the treasury of such county. The compensation of such agent shall be eight dollars per day for the time necessarily devoted to the performance of his duties and his actual and necessary expenses for such time, which compensation and expenses shall be allowed by the county board upon the presentation thereto of an itemized and verified account, stating the number of days he was engaged, the number of miles traveled and each item of expense incurred as and while acting as such agent. No allowance whatever shall be made him as mileage. (R. S. 1849, c. 143 s. 1; R. S. 1858 c. 174 s. 1; R. S. 1878, s. 4843; Ann. Stats. 1889 s. 4843; 1895 c. 259; Stats. 1898 s. 4843.)

Section 4844. APPROVAL OF APPLICATION.] The district attorney or other prosecuting officer of the State shall certify that he approves of the application; that the party whose arrest is sought is a fugitive from justice; that he believes the said fugitive to have taken refuge in the State or Territory of (naming the same,) and that the ends of justice require that the said fugitive should be brought back to this State for trial. (R. S. 1849 c. 143 s. 2; R. S. 1858 c. 174 s. 2; R. S. 1878 s. 4844; Ann. Stats. 1889 s. 4844; Stats. 1898 s. 4844.)

Section 4845. GOVERNOR NOT BOUND BY OFFICER'S ACTION.] Nothing in the preceding section shall be construed as prohibiting the issue of requisitions by the governor in cases where the district attorney or other officer of this State shall refuse to make the application or when, by reason of sickness or vacancy in the office, the application cannot be made by a district attorney or other officer; or in other cases where, by proper affidavits, ample proofs of the propriety and necessity of a requisition shall be furnished to the governor, but which for good reasons cannot be placed in the form prescribed in the preceding section. (R. S. 1849 c. 143 s. 5; R. S. 1858 c. 174 s. 5; R. S. 1878 s. 4845; Ann. Stats. 1889 s. 4845; Stats. 1898 s. 4845.)

Section 4846. COPIES OF PAPERS TO BE FILED.] Duplicate originals or certified copies of all papers necessary

upon application for a requisition, including the application and all other papers in the case, must be furnished to the governor; and when a requisition is asked for from more than one State an additional copy thereof must be furnished for each State, and one set of such papers shall be filed and kept in the executive office; and in all cases, except upon indictment, duplicate originals or certified copies of the affidavits and of the papers made before the magistrate for the arrest and examination of the accused must be furnished with the certificate of such magistrate that the person making any such affidavit is to be believed, and with the certificate of the clerk of the circuit court of the county that such magistrate is a lawful magistrate of such county (and name the town.) R. S. 1849 c. 143 s. 3, 4; R. S. 1858 c. 174 s. 3, 4; R. S. 1878 s. 4846; Ann. Stats. 1889 s. 4846; Stats. 1898 s. 4846.)

Section 4847. GOVERNOR, WHEN TO ISSUE WARRANT.] When a demand shall be made upon the governor of this State by the executive of any other State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony or any other crime the district attorney or any other prosecuting officer of the State, when required by the governor, shall forthwith investigate the ground of such demand and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially whether he is held in custody or is under recognizance to answer for any offense against the laws of this State or of the United States or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; if the governor is satisfied that such demand is conformable to law and ought to be complied with he shall issue his warrant, under the seal of the State, authorizing any duly appointed agent of the executive who makes such demand forthwith, or at any such time as shall be designated by the warrant, to take and transport such person to the

line of the State at the expense of such agents, and shall also by warrant require the civil officers within this State to afford all needful assistance in the execution thereof. (R. S. 1849 c. 143 s. 6; R. S. 1858 c. 174 s. 6; R. S. 1878 s. 4847; Ann. Stats. 1889 s. 4847; Stats. 1898 s. 4847.)

Section 4848. WARRANT FOR ARREST OF FUGITIVE.] Whenever any person shall be found in this State charged with any offense committed in any other State or Territory and liable by the constitution and laws of the United States to be delivered over upon the demand of the executive of such other State or Territory any court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath setting forth the offense and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate within the State to answer to such complaint, as in other cases. (R. S. 1858 c. 174 s. 7; R. S. 1878 s. 4848; Ann. Stats. 1889 s. 4848; Stats. 1898 s. 4848.)

Section 4849. PROCEEDINGS.] If upon the examination of the person charged it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true and that such person may be lawfully demanded of the governor he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize he shall be committed to prison and be there detained until such day, in like manner as if the offense charged had been committed within this State; and if the person so recognizing shall fail to appear, according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime he shall be committed to

prison and there detained until the day so appointed for his appearance before the court of magistrate. (R. S. 1858 c. 174 s. 8; R. S. 1878 s. 4849; Ann. Stats. 1889 s. 4849; Stats. 1898 s. 4849.)

Section 4850. DISCHARGE OF ACCUSED.] If the person so recognized or committed shall appear before the court or magistrate upon the day ordered he shall be discharged unless he be demanded by some person authorized by the warrant of the executive to receive him or unless the court or magistrate shall see cause to commit him or to require him to recognize anew for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so charged shall be recognized, committed or discharged any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape. (R. S. 1858 c. 174 s. 9; R. S. 1878 s. 4850; Ann. Stats. 1889 s. 4850; Stats. 1898 s. 4850.)

Section 4851. LIABILITY OF COMPLAINANT.] The complainant in such case shall be answerable for all the actual costs and charges and for the support in prison of any person so committed, and shall advance to the jailer one week's board as the time of commitment, and so from week to week as long as such person shall remain in jail; and if he fail to do so the jailer may forthwith discharge such person from his custody. (R. S. 1858 c. 174 s. 10; R. S. 1878 s. 4851; Ann. Stats. 1889 s. 4851; Stats. 1898 s. 4851.)

Section 4852. MICHIGAN PRISONERS.] It shall be lawful for all officers in the State of Michigan or other persons duly authorized, on lawful warrants from any judicial officer of that State, to convey any person who has been convicted of or may be charged with any crime committed within the State of Michigan through the State of Wisconsin, from the upper peninsula to the lower peninsula or from the lower peninsula to the upper peninsula of Michigan, for the purpose of final execution or trial.

(R. S. 1858 c. 174 s. 11; R. S. 1878 s. 4852; Ann. Stats. 1889 s. 4852; Stats. 1898 s. 4852.)

Section 4853. NOT TO HAVE HABEAS CORPUS.] If any person so convicted of or charged with crime in the State of Michigan or being so conveyed by such officers or other person duly authorized under the laws of Michigan to have the custody of such person, shall sue out a writ of *habeas corpus* it shall be a sufficient answer to said writ by the person having such custody that he holds such person by virtue of a lawful warrant from any judicial officer of the State of Michigan, and he shall annex to such answer a copy of the writ by which he claims the custody of such person. (R. S. 1858 c. 174 s. 12; R. S. 1878 s. 4853; Ann. Stats. 1889 s. 4853; Stats. 1898 s. 4853.)

Section 4854. AIDING ESCAPE.] Any or all persons who shall in any manner aid such person so being conveyed through the State of Wisconsin by virtue of any such writ or warrant to escape or shall resist any officer or person while engaged in carrying any such prisoner through this State shall be liable to the same penalties as now provided by the laws of this State against persons aiding prisoners to escape or resisting officers of this State. (R. S. 1858 c. 174 s. 13; R. S. 1878 s. 4854; Ann. Stats. 1889 s. 4854; Stats. 1898 s. 4854.)

XLVIII. WYOMING.

(From Compiled Statutes of Wyoming, 1910, chap. 414, sections 6136, 6323, 6324, 6325, pages 1416 and 1448.)

FUGITIVES FROM JUSTICE.

6136. FUGITIVES FROM JUSTICE.] Any fugitive from justice against whom an information may be filed may be demanded by the governor of this State from and of the executive authority of any other State or of any Territory, or of any foreign government, in the same manner,

and the same proceedings may be had therein, as is now or may hereafter be provided by law, in like cases of demand upon an indictment found. (1895, ch. 123, S. 9; R. S. 1899, 5275.)

6323. ARREST OF FUGITIVES FROM OTHER STATES.] When an affidavit shall be filed before any judge of a district court, police court, or any justice of the peace within this State, setting forth that any person charged with the commission of any criminal offense against the laws of any other state or of the territories of the United States and which, if the act had been committed in this State would by the laws thereof, have been a crime, is, at the time of filing such affidavit, within the county where the same may be filed it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant, directed by the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ, the person so charged. (R. S. 1887, S. 3361; R. S. 1899, S. 5452.)

6324. EXAMINATION AND COMMITMENT OF FUGITIVE.] When the person arrested, as provided in the preceding section, shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person to be removed to the proper place of prosecution. R. S. 1887, S. 3362; R. S. 1899, S. 5453.)

6325. NOTICE OF DETENTION.] Whenever any person is committed to jail or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace, forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offense shall have been committed or to the person injured by such offense, and no person so committed shall be delayed longer in jail than neces-

sary to allow a reasonable time to the person so notified, after they shall have received such notice, to apply for and obtain the proper requisition for the person so committed. (R. S. 1887, S. 3363; R. S. 1899, S. 5454.)

XLIX. TERRITORY OF ALASKA.

(From the Compiled Laws of the Territory of Alaska, 1913, Chapter 39, Sections 2502 to 2516, pages 771 and 772.)

PROCEEDINGS IN RELATION TO FUGITIVES FROM JUSTICE.

Section 2502. GOVERNOR TO APPOINT AGENT TO DEMAND FUGITIVE FROM JUSTICE.] That whenever a person charged with treason or other felony, in said District shall flee from justice the governor of said District may appoint an agent to demand such fugitive of the executive authority of any State or Territory of the United States in which he may be found.

Section 2503. GOVERNOR MAY REQUIRE REPORT FROM DISTRICT ATTORNEY.] That before appointing such agent the governor may require the district attorney to investigate the matter and report to him the material circumstances, together with his opinion upon the expediency of allowing the application.

Section 2504. PAYMENT OF EXPENSES OF AGENT.] That the account of the agent, including his actual expenses incurred in performing the service, must be paid by the United States marshal, after being allowed by the district court, out of moneys appropriated to pay the expenses of United States courts.

Section 2505. FUGITIVE FROM JUSTICE, WHEN TO BE DELIVERED UP BY GOVERNOR.] That a person charged in any State or Territory of the United States with treason, felony, or other crime, who may flee from justice and be found in said District, must, on demand of the executive authority of the State or Territory from which he fled,

be delivered up by the governor of said District, to be removed to the State or Territory making the demand.

Section 2506. WHEN FUGITIVE NOT TO BE DELIVERED, AND WHEN HE MAY BE.] That when the person demanded is in custody in said District, either upon a criminal charge, an indictment for a crime, or a judgment upon a conviction thereof, he can not be delivered up until he is legally discharged from such custody; but if he be in custody upon civil process only, the governor may deliver him up or not before the termination of such custody, as he may deem most conducive to the public good.

Section 2507. REPORT OF DISTRICT ATTORNEY IN RELATION TO CUSTODY OF FUGITIVE.] That before issuing a warrant for the delivery of a fugitive from justice, the governor may require the district attorney to ascertain and report to him whether such fugitive is in custody as mentioned in the last section, and if he be so upon civil process only, whether such custody be with the consent or procurement of the fugitive.

Section 2508. WHEN AND TO WHOM GOVERNOR TO ISSUE WARRANT FOR ARREST.] That when the governor finds that the demand is conformable to law, and the person demanded should be given up, either then or at some future time, if he be in custody, he must issue his warrant under the seal of the District, directed to the person who makes the demand, and authorizing him, either forthwith or at some future time therein designated, to take and transport the fugitive to the border line of said District at the expense of the person demanding the fugitive.

Section 2509. EXECUTIVE WARRANT TO DIRECT OFFICERS AND MAGISTRATE TO AID IN ITS EXECUTION.] That the executive warrant must also require all peace officers and magistrates, when requested by the person to whom the warrant is directed, to render all needful assistance in the execution thereof; and in so doing such officers or magistrates may exercise the same power and authority to prevent a rescue, an escape, or to effect a recapture, as if the fugitive was in arrest upon a charge of crime committed in said District.

Section 2510. **MAGISTRATE MAY ISSUE WARRANT FOR ARREST OF FUGITIVE.]** That a magistrate authorized to issue a warrant of arrest may issue a warrant for the arrest of a person charged as provided in section twenty-five hundred and five of this title who shall flee from justice and be found in said District.

Section 2511. **PROCEEDINGS FOR ARREST AND COMMITMENT OF FUGITIVE BEFORE MAGISTRATE.]** That the proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this act for the arrest and commitment of a person charged with a crime committed in said District, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State or Territory in which he is charged to have committed the crime, may be received as evidence before the magistrate.

Section 2512. **WHEN MAGISTRATE TO COMMIT, AND FOR WHAT TIME.]** That if from the examination it appear that the person charged has committed the crime alleged, the magistrate must commit him to the proper custody for a time specified in the commitment, which the magistrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of said District on the requisition of the executive authority of the State or Territory in which he committed the crime, or until he be legally discharged, unless he give bail as provided in the next section.

Sec. 2513. **MAGISTRATE MAY ADMIT PERSON ARRESTED TO BAIL.]** That the magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties and in such amount as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of said District.

Section 2514. **MAGISTRATE TO GIVE NOTICE TO GOVERNOR OF COMMITMENT.]** That immediately upon the commitment of the person charged the magistrate must inform the governor of said District of the name of the person, the cause of the arrest, and his commitment; and the gov-

ernor must thereupon give the like notice to the executive authority of the State or Territory having jurisdiction of the crime, to the end that a demand may be made for the arrest and surrender of the person charged.

Section 2515. PERSON ARRESTED TO BE DISCHARGED UNLESS TAKEN UNDER EXECUTIVE WARRANT.] That the person arrested must be discharged from custody or bail unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of said District.

Section 2516. PERSON CAUSING ARREST LIABLE FOR COSTS AND EXPENSES.] That the person making the complaint to the magistrate is liable for the costs and expenses of the proceedings and for the support in the jail of the person so committed; and unless he advance to the jailer or other proper officer, from week to week during the commitment, a sum sufficient for his support the jailer or other officer having such person in custody may, upon the order of the magistrate, discharge such person from custody.

L. PORTO RICO.

(From the Revised Statutes and Codes of Porto Rico, 1913, Title XIV, Sections 6577 to 6588, pages 1023 to 1024.)

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 6577. GOVERNOR MAY OFFER REWARD FOR APPREHENSION OF.] The governor may offer a reward, not exceeding one thousand dollars, for the apprehension—

1. Of any convict who has escaped from the penitentiary or,

2. Of any person who has committed, or is charged with the commission of, an offense punishable with death.

Section 6578. DELIVERY TO STATE HAVING JURISDICTION OF CRIME.] A person charged in any State of the United

States with treason, felony, or other crime, who flees from justice and is found in Porto Rico, must on demand of the executive authority of the State from which he fled, be delivered up by the governor of Porto Rico, to be removed to the State having jurisdiction of the crime.

Section 6579. **MAGISTRATE MAY ISSUE WARRANT FOR ARREST.]** A magistrate may issue a warrant for the apprehension of a person so charged who flees from justice and is found in Porto Rico.

Section 6580. **PROCEEDINGS FOR ARREST AND COMMITMENT.]** The proceedings for the arrest and commitment of a person charged are, in all requests similar to those provisions of this code for the arrest and commitment of a person charged with a public offense committed in Porto Rico, except that an exemplified copy of an indictment found or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Section 6581. **MAY COMMIT.]** If, from the examination, it appears that the accused has committed the crime alleged, the magistrate by warrant reciting the accusation, must commit him to the proper custody in his district, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of Porto Rico, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

Section 6582. **MAY ADMIT TO BAIL.]** The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of Porto Rico.

Section 6583. **TO GIVE NOTICE OF COMMITMENT.]** Immediately upon the arrest of the person charged, the

magistrate must give notice thereof to the prosecuting attorney of the district.

Section 6584. DUTY OF PROSECUTING ATTORNEY.] The prosecuting attorney must immediately thereafter give notice to the executive authority of the State or to the prosecuting attorney or presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Section 6585. PERSON ARRESTED WHEN DISCHARGED.] The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant, or undertaking, he is arrested under the warrant of the governor of Porto Rico.

Section 6586. RETURN OF MAGISTRATE TO DISTRICT COURT AND PROCEEDINGS THEREIN.] The magistrate must return his proceedings to the district court of the district which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be cancelled, or may continue his detention for a longer time, or re-admit him to bail, to appear and surrender himself within a time specified in the undertaking.

Section 6587. PAYMENT OF EXPENSES OF AGENT.] When the governor of Porto Rico, in the exercise of the authority conferred by the executive authority of any State of the United States, or of any foreign government (demands) the surrender to the authorities of Porto Rico, of a fugitive who has been found and arrested in such State or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited and paid out of the Insular Treasury.

Section 6588. COMPENSATION, FEE OR REWARD, HOW ALLOWED.] No compensation, fee or reward of any kind can be paid to or received by a public officer of Porto Rico, or other person, for a service rendered in procuring from the governor the demand mentioned in the pre-

ceding section, or the surrender of the fugitive or for conveying him to Porto Rico, or detaining him therein, except as provided for in such section.

See *Kopel v. Bingham*, (1908), 211 U. S. 468, Sup. Ct. 190, 53 L. ed. 286.

LI. TERRITORY OF HAWAII.

The Hawaiian Islands being a Territory of the United States the Federal law on interstate rendition applies to this Territory as to any other State or Territory.

LII. PHILIPPINE ISLANDS.

See chapter XXII, section 221.

LIII. DISTRICT OF COLUMBIA.

See chapter IV, sections 27 to 34.

TABLE OF CASES CITED

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

A.

- Ableman v. Booth, 21 How. 506: 21, 128.
Adriance v. Lagrave, 59 N. Y. 110: 136.
Allen v. Miller, 11 Ohio St. 374: 137.
American Banana Co. v. United Fruit Co., 213 U. S. 347: 214.
Appleyard v. Commonwealth, 203 U. S. 222: 52, 59, 143, 183, 186, 206, 207, 208, 212.
Armstrong v. Van De Venter, 21 Wash. 682: 77, 86, 183.

B.

- Bagnall v. Ableman, 4 Wis. 163: 220.
Baker v. State, 88 Wis. 147: 132.
Barnes v. Nelson, 23 S. D. 181: 183.
Barrenger v. Baum, 103 Ga. 465: 85.
Barriere v. State, 142 Ala. 72: 92, 183, 185.
Bassing v. Cady, 208 U. S. 386: 208.
Beacon v. Rogers, 79 Hun, 220: 137.
Belt, Petitioner, 159 U. S. 95: 197.
Benn v. Oswell, 37 How. Pr. 235: 136.
Benson v. Henkel, 198 U. S. 1: 30, 218, 221.
v. Palmer, 31 App. Cas. (D. C.) 561: 56.
Bergman v. Backer, 157 U. S. 655: 183, 197.
Bergman v. State, 60 Tex. Crim. 8: 183.
Blackwell v. Jennings, 128 Ga. 264: Appendix—page 356.
Blodgett v. Race, 18 Hun. 132: 34.
Botts v. Williams, 56 Ky. (17 B. Mon.) 687: Appendix—page 385.
Brockaway v. Crawford, 48 N. C. 433: 183.
Browning v. Abrams, 51 How. Pr. 172: 136.
Brown's Case, 112 Mass. 409: 7, 19.
Bruce v. Raynor, 124 Fed. 481: 200.

C.

- Campbell v. State, 166 Ala. 33: 107.
Carpenter v. Spooner, 2 Sandf. 717: 136, 128.
Carper v. Fitzgerald, 121 U. S. 87: 197.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- Carr v. State, 104 Ala. 43: 132.
 Carroll's Case, Chicago L. N., Sept. 28, 1878: 100.
 Carruth v. Taylor, 8 N. D. 166: 185.
 Case of Bailey, 1 Woolw. 422: 34.
 Case of Bollman, 2 Cranch, 75: 34.
 Cavanaugh v. Smith, 84 Ind. 384: 137.
 City of Annapolis v. Howard, 80 Md. 244: 185.
 Cohens v. Virginia, 6 Wheat. 264: 197.
 Coleman v. State, 53 Tex. Crim. 93: 52, 90.
 Cook v. Brown, 125 Mass. 503: 137.
 Cook v. Hart, 146 U. S. 183: 54, 194, 197, 198.
 Commonwealth v. Cooke, 55 Pa. Supr. Ct. 435: 183.
 v. Daniel, 4 Clark, 49: 136.
 v. Johnson, 2 Pa. Dist. 673: 79.
 v. Macloon, 101 Mass. 1: 214.
 v. Phelps, 209 Mass. 396: 107.
 v. Smith, 11 Allen (Mass.) 243: 214.
 v. Tracy, 5 Met. 549: 39.
 v. Wright, 158 Mass. 149: 131, 195.
 Commonwealth Bank v. Griffith, 14 Pet. 56: 197.
 Commonwealth *ex rel.* Burlingame v. Hare, 36 Pa. Supr. Ct. 125: 52, 53, 153.
 Commonwealth *ex rel.* Schneider v. Chess, 21 Pa. Dist. 523: 105.
 Commonwealth *ex rel.* v. McCandless, 7 Pa. Co. Ct. 51: 110.
 Commonwealth *ex rel.* v. Supt. etc., 220 Pa. St. 401: 110, 144, 161.
 Commonwealth of Mass. v. Klaus, 129 N. Y. Supp. 1117: 63.
 v. Klaus, 145 App. D. 798: 63.
 Compton v. Alabama, 214 U. S. 1: 211, 213.
 v. State, 152 Ala. 68: 211.
 v. Wilder, 40 Ohio St. 130: 136, 149.
 Cousouland v. Rosomano, 176 Fed. 481: 137.
 Covington v. Arrington, 32 Miss. 144: 185.
 Cunningham v. Baker, 104 Ala. 160: 102, 183.

D.

- Daniel's Case, Binn's Justice, 8th Ed., 439: 125.
 Dauber v. Dalzell, 10 Ohio Dec. 227: 136.
 Davis' Case, 122 Mass. 324: 85, 209.
 Day v. Townsend, 70 Iowa 538: Appendix—page 374.
 Dennison v. Christian, 196 U. S. 637: 52, 143, 200.
 v. Christian, 72 Neb. 703: 92, 200.
 Depoilly v. Palmer, 28 App. Cas. (D. C.) 324: 52, 53, 90.
 Dow's Case, 18 Pa. St. 37: 107.
 Drew v. Thaw, 235 U. S. 432: 145, 215.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- Drinkall v. Speigle, 68 Conn. 441: 19, 53, 60.
 Dunkin v. Seifert, 123 Iowa, 64: 185.
 Dunlap v. Cody, 31 Iowa, 260: 137.

E.

- Elmore v. State, 45 Ark. 243: 129.
Ex parte Ainsworth, 27 Tex. 731: 185.
 Ammons, 34 Ohio St. 518: 39, 112.
 Bain, 121 U. S. 1: 81, 84.
 Baker, 43 Tex. Crim. 281: 92.
 Barker, 87 Ala. 4: 129.
 Bergman, 18 Nev. 331: 185.
 Bergman, 60 Tex. Crim. 8: 39.
 Bigelow, 113 U. S. 328: 197.
 Block, 147 Fed. 836: 221.
 Brown, 28 Fed. 653: 53, 206.
 Brown, 178 S. W. 366: 92, 183.
 Brunell, 80 Wis. 563: 185.
 Canavan, 17 N. M. 100: 185.
 Chambers, 221 Mass. 178: 183.
 Cheatham, 50 Tex. Crim. 51: 92, 163, 183,
 Chung Kin Tow, 218 Fed. 185: 52.
 Cubreth, 49 Cal. 436: 39, 46, 102.
 Dawson, 83 Fed. 306: 77.
 Denning, 50 Tex. Crim. 629: 47.
 Devine, 74 Miss. 714: 90, 153, 183.
 Dickson, 4 Ind. Ter. 481: 77.
 Dimmig, 74 Cal. 164: 92, 93, 183.
 Dorr, 3 How. 103: 197.
 Doyle, 62 W. Va. 280.
 Duddy, 219 Mass. 548: 183.
 Edwards, 11 Fla. 174: 185.
 Edwards, 91 Miss. 621: 82, 145, 185.
 Fonda, 117 U. S. 516: 194, 197.
 Faihtinger, 163 S. W. 441: 69.
 Good, 19 Ark. 410: 185.
 Goodman, 182 S. W. 1120: 183.
 Graham, 216 Fed. 813: 183.
 Hampton, 1 Ohio N. P. 181: 73, 183.
 Hart, 63 Fed. 240: 84, 183.
 Hart, 59 Fed. 894: 84, 199.
 Hobbs, 32 Tex. Crim. 312: 100.
 Hoffstot, 218 U. S. 665: 183, 213.
 Hoffstot, 180 Fed. 240: 183, 213, 214.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- Ex parte* Hose, 34 Nev. 91: 80.
 Howe, 26 Oregon, 181: 185.
 Innes, 173 S. W. 291: 215a.
 Johnson, 167 U. S. 120: 128.
 Ker, 18 Fed. 167: 129.
 Knowles, 16 Ky. Law, 263: 198.
 Krause, 228 Fed. 547: 217.
 Lacrouts, 134 La. 900: 185.
 Law, 2 Ala. App. 257: 52.
 Lewis, 79 Cal. 95: 172.
 Lewis, 34 Nev. 29: 183.
 Lewis, 170 S. W. 1098: 183, 92.
 Lorraine, 16 Nev. 63: 39, 183.
 Masse, 95 S. C. 315: 145, 185.
 McDaniel, 173 S. W. 1018: 101.
 McKean, 3 Hughes, (U. S.) 23: 39, 183.
 McKnight, 48 Ohio St. 588: 125.
 Morgan, 20 Fed. 298: 41, 84, 92, 210.
 Overfield, 152 Pac. 568: 183.
 Owen, 10 Okl. Crim. 284: 84, 92, 183.
 Pearce, 155 Fed. 663: 196.
 Pearce, 32 Tex. Crim. 301: 85, 209.
 Pfitzer, 28 Ind. 450: 92, 183.
 Phillips, 57 Miss. 357: 185.
 Powell, 20 Fla. 806: 75, 97, 183, 185.
 Reggel, 114 U. S. 642: 19, 48, 53, 54, 59, 74, 130, 143, 166, 183,
 192, 193, 197, 198, 199, 206, 207, 212.
 Richards, 102 Ind. 260: 185.
 Ring, 28 Cal. 247: 185.
 Romanes, 1 Utah, 23: 200.
 Rowland, 35 Tex. Crim. 108: 92, 183.
 Royall, 117 U. S. 241: 197, 199.
 Scott, 9 B. & C. 446: 129.
 Sheldon, 34 Ohio St. 319: 183, 200.
 Slauson, 73 Fed. 666: 92, 146.
 Spears, 88 Cal. 640: 92.
 Spencer, 34 Nev. 240: 183.
 Smith, 3 MacLean, 121: 40, 60, 68, 84, 91, 92, 99, 162, 183.
 Stanley, 25 Tex. Crim. 372: 74, 77.
 Swearingen, 13 S. C. 80: 142, 153, 206.
 Thaw, 214 Fed. 423: 215.
 Thomas, 53 Tex. Crim. 37: 183.
 Thompson, 93 Ill. 89: 185.
 Thornton, 9 Tex. Crim. 635: 41, 69, 96, 102, 183.
 Wall, 84 Miss. 783: 159.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

Ex parte Walters, — Miss. —, 64 So. 2: 70.

White, 49 Cal. 434: 82, 183, 200.

White, 2 Cal. App. 726: 185.

Whitten, 67 Fed. 320: 197.

Williams, 10 Okl. Crim. 344: 60.

Williard & Wife, Serg't Con. Law, 395: 162.

F.

Farrall v. Hawley, 78 Conn. 150: 143, 163, 183.

Faust v. Judge, 30 Mich. 266: 185.

Filler v. Smith, 96 Mich. 347: 102.

Fleming v. Commas, 31 W. Va. 608: 185.

Forbes v. Hicks, 27 Neb. 111: Appendix—page 410.

G.

Gaffigan & Merrick Case, Spear on Extradition, 713: 100.

Gillis v. Leekley, 38 Wash. 156: 116, 183.

Gonzales v. Williams, 192 U. S. 15: 210.

Gordon v. Caldleugh, 3 Cranch, 268: 197.

Gordon v. Hobart, 2 Sumner, 401: 211.

H.

Hall v. Patterson, 45 Fed. 352: 129.

Ham v. State, 4 Tex. App. 645: 56, 131, 195.

Hammond v. People, 32 Ill. 446: 185.

Harland v. Terr. Wash., 3 Wash. Terr. 131: 88.

Harris v. Magee, 150 Iowa, 144: 153, 163.

Hartman v. Aveline, 63 Ind. 344: 40, 56, 69, 198.

Hayes v. Palmer, 21 App. Cas. (D. C.) 450: 183.

Haywood v. Nichols, 203 U. S. 222: 203.

Hackney v. Welsh, 107 Ind. 253: 73, 126, 183.

Heinekamp v. Beaty, 74 Md. 395: 137.

Henderson v. Jones, 52 Ohio St. 530: 185.

Hibler v. State, 43 Tex. 197: 50, 53, 90, 206.

Higgins v. Tax Assessors, 27 R. I. 401: 185.

Hill v. Goodrich, 32 Conn. 588: 137.

Holley v. Mix, 3 Wend. 350: 106.

Holmes v. Jannison, 14 Pet. 540: 15.

Hopkins v. Coburn, 1 Wend. 292: 139.

Houston v. Moore, 5 Wheat. 21: 38.

Howe v. State, 9 Mo. 682: 185.

Hudson v. State, 52 Ohio St. 673: 19.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- Hughes v. Pflanz, 138 Fed. 980: 60.
 Hutardo v. California, 110 U. S. 516: 81, 84.
 Hyatt v. People *ex rel.* Corkran, 188 U. S. 691: 51, 52, 55, 59, 94, 96,
 109, 143, 163, 187, 198, 200, 206, 207, 209, 212, 213, 214.
 Hyland v. Rochelle, 179 Ind. 671: 39, 183.

I.

- Innes v. Tobin, 240 U. S. 127: 215a.
In re Baker, 21 Wash. 259: 183.
 Benson, 130 Fed. 486: 30, 221.
 Bloch, 87 Fed. 981: 53, 206.
 Brophy, 2 Ohio N. P. 230: 127.
 Bruchman, 28 N. D. 358: 152.
 Buell, 3 Dill. 116: 30.
 Buell, 4 Dill. 323: 40.
 Burkhardt, 33 Fed. 25: 34.
 Burrus, 136 U. S. 586: 197.
 Charleston, 34 Fed. 531: 116.
 Clark, 9 Wend. 212: 85, 143, 153.
 Clasby, 3 Utah, 183: 185.
 Cook, 49 Fed. 833: 147, 163, 214.
 Cooper, 32 Vt. 253: 185.
 DooWoon, 18 Fed. 898: 69, 84, 92, 96, 183.
 Duncan, 139 U. S. 449: 197.
 Dana, 7 Ben. 1: 33, 34, 221.
 Fairman, 3 Ohio N. P. (N. S.) 485: 88.
 Ferez, 7 Blanchf. 345: 34.
 Fetter, 3 Zab. 311: 9, 93, 105, 107, 198.
 Fitton, 45 Fed. 474: 92, 148.
 Fitton, 55 Fed. 273: 132.
 Flack, 88 Kan. 616: 3, 127, 132.
 Fowles, 89 Kan. 430: 129.
 Frederick, 149 U. S. 70: 197.
 Galbreath, 24 N. D. 582: 50.
 Garfinkle, 37 Wash. 650: 185.
 Gill, 92 Ky. 118: 185.
 Greaser, 72 Neb. 612: 185.
 Greenough, 31 Vt. 279: 85, 91, 118, 153, 154, 183.
 Guden, 171 N. Y. 529: 163.
 Hammil, 9 S. D. 390: 185.
 Haywood, 12 Idaho, 265: 202.
 Henderson, 27 S. D. 155: 137.
 Henry, 29 How. Pr. 185: 106.
 Heyward, 1 Sandf. 701: 92, 102, 183.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- In re Hooper*, 52 Wis. 699: 82, 183.
 Hughes, Phill. (N. C.) L. 57: 50, 100.
 Jackson, 2 Flipp. 183: 45, 60, 183.
 Jugiro, 140 Fed. 291: 197.
 Keller, 36 Fed. 681: 52, 85.
 King, 169 Mass. 46: 185.
 Klyne, 52 Kan. 441: 185.
 Kopel, 148 Fed. 505: 93, 210.
 Kuhns, 36 Nev. 487: 50, 183, 92.
 Lane, 135 U. S. 443: 210.
 Lawrence, 80 Fed. 103: 132.
 Leary, 10 Ben. 197: 19, 117, 171, 183.
 Leland, 7 Abb. Pr. (N. S.) 64: 92.
 Little, 129 Mich. 454: 127, 132, 133.
 Loney, 134 Fed. 372: 197.
 Lyon, 24 Wash. L. R. 679: 56.
 Mahany, 29 Col. 442: 185.
 Mahon, 34 Fed. 525: 128.
 Manchester, 5 Cal. 238: 159.
 McPhun, 30 Fed. 57: 108.
 McMaster, 9 Okl. 436: 185.
 Miles, 52 Vt. 609: 129, 195.
 Miller, 23 Fed. 23: 129.
 Mitchell, 4 N. Y. Crim. 596: 183.
 Mitchell, 171 Fed. 289: 159.
 Mohr, 73 Ala. 503: 39, 153, 163, 198, 206.
 Moore, 75 Fed. 822: 132.
 Moyer, 12 Idaho, 250: 202.
 Mutchler, 8 Ohio N. P. (N. S.) 345: 183.
 Neagle, 135 U. S. 1: 197.
 Noyes, 17 Alb. L. J. 407: 131.
 Palmer, 138 Mich. 36: 142.
 Perkins, 2 Cal. 424: 185.
 Price, 83 Fed. 831: 221.
 Pettibone, 12 Idaho, 264: 202.
 Renshaw, 18 S. D. 32: 90.
 Roberts, 24 Fed. 132: 85, 150, 193.
 Robinson, 29 Nev. 137: 137.
 Rosenblat, 51 Cal. 285: Appendix—page 340.
 Rothaker, 11 Abb. N. C. 122: 34.
 Rule of Court, 3 Woods, 502: 34.
 Runkle, 125 Fed. 998: 221.
 Rutter, 7 Abb. Pr. (N. S.) 67: 40, 69, 92, 183.
 Snyder, 10 Idaho, 682: 185.
 Spangler, 11 Mich. 298: 128.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

In re Strauss, 197 U. S. 324: 82, 201, 209.*Strauss*, 126 Fed. 327: 52, 90, 183, 201, 213.*Sultan*, 115 N. C. 57: 53, 100, 214.*Taylor*, 29 R. I. 131: 137.*Terrell*, 51 Fed. 213: 221.*Tod*, 12 S. D. 386: 42, 50, 92, 95, 183.*VanScelver*, 42 Nev. 772: 85, 185, 209.*Voorhees*, 3 Vroom, 142: 7, 50, 53, 153, 206, 209.*Walker*, 61 Neb. 814: 132, 136.*Waterman*, 29 Nev. 288: 86, 183.*White*, 45 Fed. 237: 41, 85.*White*, 55 Fed. 54: 53, 122, 153, 183, 198, 206.*Williard*, 93 Neb. 298: 52, 119.*Wilson*, 140 U. S. 575: 197.*Wood*, 140 U. S. 279: 197.

J.

Jackson v. Archibald, 12 Ohio C. C. 155: 79.*Jones v. Leonard*, 50 Iowa, 106: 55, 198.*Johnston v. Riley*, 13 Ga. 94: 108. Appendix—page 356.

K.

Katyuga v. Cosgrove, 67 N. J. L. 213: 77.*Kaufman v. Kennedy*, 25 Fed. 785: 128.*Kentucky v. Dennison*, 24 How. 66: 2, 6, 7, 16, 19, 44, 47, 67, 74, 130, 190, 192, 193, 198, 200, 206, 215.*Ker v. Illinois*, 119 U. S. 436: 129, 194.*v. People*, 110 Ill. 637: 129.*Kemper v. Metzger*, 169 Ind. 112: 77, 183.*Kingsbury's Case*, 106 Mass. 223: 50, 73, 85, 183, 198, 206.*Knowlton v. Baker*, 72 Maine, 203: 183.*Knowlton's Case*, 5 Crim. L. Mag. 250: 100.*Knox v. State*, 164 Ind. 230: 3, 126, 132.*Kopel v. Bingham*, 211 U. S. 468: 210.*Kurtz v. State*, 22 Fla. 36: 85, 100, 151.

L.

Lambert v. Barrett, 157 U. S. 697: 197.*Langdon v. People*, 133 Ill. 382: 71.*Lascelles v. Georgia*, 148 U. S. 543: 2, 3, 19, 126, 130, 195.
v. State, 90 Ga. 347: 130.*Lavina v. State*, 63 Ga. 513: Appendix—page 357.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- Leary's Case, 6 Abb. N. C. (N. Y.) 44: 171.
 Lippman v. People, 175 Ill. 110: 93, 183.
 Livingston v. Livingston, 24 Ga. 379: 185.
 Lopez v. Sattler, 1 D. & B. Crown Cases, 525: 128.
 Leonard v. Zweifel, 151 N. W. 1054: 183.

M.

- Mahon v. Justice, 127 U. S. 714: 128, 194.
 Malcolmson v. Gibbons, 56 Mich. 459: 102, 104, 183.
 Marbles v. Creecy, 215 U. S. 63: 186, 212.
 Mark v. Browning, (Utah), 115 Pac. 275: 3, 183.
 Martin v. Hunter, 1 Wheat. 304: 197.
 Matter of Cannon, 47 Mich. 481: 125, 133, 148, 78.
 Briscoe, 51 How. Pr. 422: 163.
 Hughes, Phill. L. (N. C.) 57: 100.
 Sylvester, 21 Wash. 263: 171.
 Titus, 8 Ben. (U. S.) 411: 40.
 Merrill v. George, 23 How. Pr. 331: 139.
 Metcalf v. Clark, 41 Barb. 45: 136, 128.
 Missouri v. Andriano, 138 U. S. 496: 197.
 Moletor v. Sinnen, 76 Wis. 308: 136.
 Monynahan v. Wilson, 2 Flipp. 130: 128.
 Moore v. Green, 73 N. C. 394: 138.
 Morey v. Whitney, 203 U. S. 222: 205.
 Morrill v. Quarles, 35 Ala. 544: 102.
 Morrison v. Dyer, 143 Iowa, 502: 52, 183.
 Morton v. Skinner, 48 Ind. 123: Appendix—page 367.
 Moyer v. Nichols, 203 U. S. 222: 204.
 Munsey v. Clough, 196 U. S. 364: 49, 57, 59, 90, 101, 143, 199, 207, 209,
 212, 215.
 Murray v. Wilcox, 122 Iowa, 188: 136.
 Musgrave v. State, 133 Ind. 297: 126.
 McCullough v. Maryland, 4 Wheat. 316: 201.
 McNichols v. Pease, 207 U. S. 110: 52, 53, 59, 87, 90, 109, 143, 207,
 208, 212.
 McReady v. Nick, 33 Conn. 321: 185.

N.

- New York v. Eno, 155 U. S. 89: 197.
 Nicholas v. Cornelius, 7 Ind. 611: Appendix—page 368.
 Noles v. State, 24 Ala. 672: 196.
 Norris v. Beach, 2 J. R. 294: 139.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

O.

- Oley v. Brown, 5 How. Pr. 92: 137.
 O'Malley v. Quigg, 172 Ind. 350: 183.

P.

- Paine v. Kelley, 197 Mass. 23: 137.
 People v. Pratt, 78 Cal. 345: 129.
 v. Strosnider, 264 Ill. 435: 132.
 v. Stockwell, 135 Mich. 341: 82, 183.
 People *ex rel.* Bowers v. Barrett, 2 Ill. Cir. 149: 140.
 People *ex rel.* Breslin v. Lawrence, 107 N. Y. 607: 185.
 People *ex rel.* Corkran v. Hyatt, 172 N. Y. 182: 39, 51, 55, 93, 101, 109,
 143, 163, 198.
 People *ex rel.* Cornett v. Warden, 60 Misc. (N. Y.) 525: 92, 183.
 People *ex rel.* Draper v. Pinkerton, 77 N. Y. 245: 50, 162.
 People *ex rel.* Genna v. McLaughlin, 145 App. Div. (N. Y.) 513: 52, 143.
 People *ex rel.* Kopel v. Bingham, 189 N. Y. 124: 210.
 People *ex rel.* Jourdan v. Donohue, 84 N. Y. 438: 97.
 People *ex rel.* Kopel v. Bingham, 117 App. Div. (N. Y.) 411: 210.
 People *ex rel.* Lawrence v. Brady, 56 N. Y. 182: 3, 92, 153, 167, 183, 198.
 People *ex rel.* Livingston v. Wyatt, 186 N. Y. 386: 93.
 People *ex rel.* Marshall v. Moore, 153 N. Y. Supp. 10: 19, 40.
 People *ex rel.* Meeker v. Baker, 127 N. Y. Supp. 382: 183.
 People *ex rel.* McCoy v. Warden, 3 N. Y. Crim. 370: 109.
 People *ex rel.* Nubell v. Byrnes, 33 Hun. 108: 183.
 People *ex rel.* Post v. Cross, 135 N. Y. Supp. 536: 131, 195.
 People *ex rel.* Ryan v. Conlin, 15 Misc. (N. Y.) 303: 109, 143.
 People *ex rel.* Tweed v. Lipscomb, 60 N. Y. 559: 159, 185.
 People *ex rel.* Watson v. Judge, 40 Mich. 729: 136.
 Person v. Grier, 66 N. Y. 124: 139.
 Pepka v. Cronin, 155 U. S. 100: 197.
 Pettibone v. Nichols, 203 U. S. 192: 39, 53, 58, 59, 147, 202, 206, 207,
 212, 215.
 Pettus v. State, 42 Ga. 358: 40.
 Pfiffner v. Krapfall, 28 Iowa, 27: 128.
 Pearce v. Texas, 155 U. S. 387: 86, 196, 197, 199.
 Pierce v. Creecy, 210 U. S. 387: 2, 209, 214, 215.
 Pratt v. Hill, 16 Barb. 307: 106.
 Price v. McCarty, 89 Fed. 84: 221.
 Prigg v. Commonwealth, 16 Pet. 539: 38, 123.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

R.

- Rea v. Smith, 2 Handy, (Ohio) 193: 102.
Reed v. United States, 224 Fed. 378: 183.
Reed v. Williams, 29 N. J. L. 385: 128, 137.
Reid v. Ham, 54 Minn. 305: 132.
Roberts v. Reilly, 116 U. S. 80: 53, 54, 59, 65, 85, 88, 163, 164, 193, 197, 198, 199, 200, 207, 209, 212, 214, 215.
Robb v. Connolly, 111 U. S. 624: 40, 59, 94, 165, 168, 191, 193, 197, 198, 207.
Robinson v. Flanders, 29 Ind. 10: 39, 111, 183.
Rosenthal v. Circuit Judge, 98 Mich. 208: 137.
Ross v. Crofutt, 84 Conn. 370: 79, 183.
Russell v. Commonwealth, 1 Penn. & W. 82: 185.
Rutledge v. Krauss, 73 N. J. L. 397: 132, 136.
Ryan v. Rogers, 21 Wyo. 311: 52.

S.

- Sanford v. Chase, 3 Cow. 381: 139.
Saveland v. Conners, 121 Wis. 30: 137.
Seaver v. Robinson, 3 Durr. 622: 139.
Simmons v. Vandyke, 138 Ind. 380: 106, 183.
Simpson v. State, 92 Ga. 41: 196, 214.
Singleton v. State, 144 Ala. 104: 183.
Small v. Montgomery, 17 Fed. 865: 128.
Smith v. State, 21 Neb. 552: 79, 92.
Snelling v. Watrous, 2 Paige, 314: 128.
Solomon's Case, 1 Abb. Pr. (N. S.) 347: 75, 84, 92.
Speer v. Davis, 38 Ind. 271: 185.
Steele v. Shirley, 13 Smd. & M. (Miss.) 106: 185.
State v. Anderson, 1 Hill, 327: Appendix—page 451.
Stein v. Valkenhuysen, 3 E. B. & E. 65: 128.
Strassheim v. Daily, 221 U. S. 280: 61, 140, 214.
State v. Bates, 101 Minn. 303: 183.
 v. Brewster, 7 Vt. 118: 128.
 v. Buckhan, 29 Minn. 462: 185.
 v. Buzine, 4 Harr. 577: 103, 118, 183.
 v. Currie, 174 Ala. 1: 69.
 v. Curtis, 111 Minn. 240: 183.
 v. Cutshall, 110 N. C. 536: 70.
 v. Day, 58 Iowa, 678: 129.
 v. Daniels, 6 Pa. L. J. 417: 118.
 v. Dunn, 66 Kan. 483: 127.
 v. Fitzgerald, 51 Minn. 534: 129.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

- State v. Gleason, 32 Kan. 338: 93, 183.
 v. Glover, 112 N. C. 896: 132.
 v. Goss, 66 Minn. 291: 209.
 v. Hall, 40 Kan. 338: 39, 125, 127.
 v. Hall, 114 N. C. 909: 53, 198.
 v. Hall, 115 N. C. 811: 53, 93.
 v. Harvell, 89 Mo. 588: Appendix—page 405.
 v. Howell, R. M. Charlt. (Ga.) 120: 102.
 v. Hudson, 2 Ohio N. P. 1: 19.
 v. Hufford, 28 Iowa, 391: 82, 92, 183.
 v. Kealy, 89 Iowa, 94: 132.
 v. Loper, Ga. Dec. Part II, 35: 102.
 v. McNaspy, 58 Kan. 691: 127.
 v. O'Connor, 38 Minn. 243: 153, 183, 209.
 v. Patterson, 116 Mo. 505: 127.
 v. Richardson, 34 Minn. 115: 92, 183.
 v. Richter, 37 Minn. 436: 206.
 v. Ross, 21 Iowa, 467: 129.
 v. Schlemm, 4 Harr. 577: 118, 153, 162.
 v. Sheldon, 79 N. C. 605: 102.
 v. Stewart, 60 Wis. 587: 195.
 v. Smith, 1 Bailey S. C. L. 283: 128.
 v. Swope, 72 Mo. 402: Appendix—page 405.
 v. Whittle, 59 S. C. 297: Appendix—page 451.
 v. Taylor, 70 Vt. 1: 103, 183.
 v. Vaughan, 71 Conn. 457: 159.
 v. Walker, 119 Mo. 467: 127.
 v. Wine, 7 N. D. 18: 132.
 State *ex rel.* Arnold v. Justus, 84 Minn. 237: 52, 97, 101, 103, 183.
 State *ex rel.* Brown v. Stewart, 60 Wis. 587: 131.
 State *ex rel.* Denton v. Curtis, 111 Minn. 240: 74.
 State *ex rel.* Fowler v. Langum, 147 N. W. 708: 145.
 State *ex rel.* Grande v. Bates, 101 Minn. 303: 117.
 State *ex rel.* Grass v. White, 40 Wash. 560: 183.
 State *ex rel.* Hattabaugh v. Boynton, 140 Wis. 89: 136.
 State *ex rel.* Herbert v. Coleman, 310 Cir. App. 316: 145.
 State *ex rel.* Jackson v. Kennie, 24 Mont. 45: 185.
 State *ex rel.* Munsey v. Clough, 71 N. H. 594: 57, 185, 199, 209.
 State *ex rel.* Nisbett v. O'Toole, 69 Minn. 104: 100.
 State *ex rel.* Petry v. Leidigh, 47 Neb. 126: 132.
 State *ex rel.* Register v. McGahey, 12 N. D. 535: 93.
 State *ex rel.* Rinne v. Gerbes, 111 Minn. 132: 87.
 Sternaman v. Peck, 80 Fed. 883: 221.
 Stewart v. United States, 119 Fed. 93: 221.
 Sweet v. Kimball, 166 Mass. 332: 137.
 Swift v. United States, 196 U. S. 375: 214.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

T.

- Tarble's Case, 13 Wall. 397: 128.
 Taylor v. Commonwealth, 29 Ky. L. 714: 132.
 Taylor v. Taintor, 16 Wall. 366: 44.
 Taylor v. Wise, 126 N. W. (Iowa,) 1126: 50.
 Tennessee v. Jackson, 36 Fed. 258: 56, 147.
 Thomas v. Evans, 73 Ohio St. 145: 39, 112.
 Thompson v. State, 25 Ala. 41: 196.
 Thorp v. Metzger, 77 Wash. 62: 172.
 Tiberg v. Warren, 192 Fed. 458: 176.
 Tinsley v. Treat, 205 U. S. 20: 219, 220.
 Townsend v. Smith, 47 Wis. 623: 136.
 Tullis v. Fleming, 69 Ind. 15: 153.
 Tytler v. Tytler, 15 Wyo. 319: 185.

U.

- United States v. Brawner, 7 Fed. 86: 34.
 v. Campbell, 179 Fed. 762: 30, 221.
 v. Case, 8 Blanchf. 251: 34.
 v. Dana, 68 Fed. 886: 30, 32.
 v. Greene, 100 Fed. 942: 221.
 v. Haskins, 3 Sawy. 262: 54.
 v. Horton, 2 Dill. 94: 34.
 v. Lee, 84 Fed. 627: 221.
 v. Pope, Fed. Cas. No. 16,069: 34, 146.
 v. Polite, 35 Fed. 58: 34.
 v. Martin, 17 Fed. 150: 34.
 v. Rauscher, 119 U. S. 407: 127, 130, 131.
 v. Rundlett, 2 Curt. 41: 34, 218.
 v. Tureaund, 20 Fed. 621: 34, 93.
 v. Winsatt, 161 Fed. 586: 221.
 v. Yarbrough, 122 Fed. 293: 221.
 Underwood v. Fetter, 6 N. Y. Leg. Obs. 66: 137.
 Union Pacific Co. v. Belek, 211 Fed. 699: 105.
 Union Sugar Refinery Co. v. Matheassen, 2 Cliff. 304: 128.

V.

- Vallad v. State, 2 Mo. 26: 183.
 VanHorn v. Great West. Mfg. Co., 37 Kan. 526: 137.
 Van Liew v. Johnson, — N. Y. — unreported: 139.
 Vanvabry v. Staton, 88 Tenn. 334: 185.
 Virginia v. Paul, 148 U. S. 107: 201.
 Vollmer v. County, 53 Ind. App. 149: 183.

(REFERENCES ARE TO SECTIONS OF THIS BOOK.)

W.

- Walton v. Gatlin, 1 Winst. (N. C.) 318: 185.
Wanzer v. Bright, 52 Ill. 35: 137.
Waterman v. State, 116 Ind. 51: 126.
Weale v. Clinton, 158 Mich. 563: 137.
Webb v. York, 79 Fed. 616: 85.
Wells v. Gurney, 8 Barn. & Cresw. 769: 136.
Whitten v. Tomlinson, 160 U. S. 245: 86, 197.
Wilcox v. Nolze, 34 Ohio St. 522: 56, 112, 185, 198.
Wildenhaus' Case, 120 U. S. 1: 197.
Williams *ads.* Reed, 29 N. J. L. 385: 128, 137.
Williams v. Webber, 1 Colo. App. 191: 124.
Williamson v. Bacon, 10 Wend. 636: 137.
Wood v. Wood, 78 Ky. 624: 137.
Work v. Corrington, 34 Ohio St. 64: 69, 100.
Worth v. Wheatley, 108 N. E. 958: 88.
Wright v. Henkle, 190 U. S. 40: 159.
Wyeth v. Richardson, 76 Mass. 240: 185.

Y.

- Yates v. People, 6 Johns. 337: 185.
Young v. State, 155 Ala. 145: 79.

Z.

- Zulch v. Roach, 151 Pac. 1101: 183.

See Addenda for latest cases: pages 328-330.

INDEX

(NUMBERS REFER TO PAGES OF THIS BOOK.)

A.

ABSENCE—

from State when crime is committed, 77, 203, 268, 302.
proof of, a difference from alibi, 204.

ABUSE OF POWER—

dangerous to the citizen but infrequent, 196.

ABUSE OF PROCESS—

use of process for ulterior purpose is, 206, 218-220.
governor if convinced of, should refuse warrant, 216, 221.
in interstate rendition a fraud is, 220.
Tennessee v. Jackson discussion of, 221.
ruling of Michigan supreme court on, 223.
Compton v. Wilder, Ohio rule on, 224-228.
fugitive when entitled to discharge, 232-233.

ACCUSED—(See *Fugitive from Justice*.)

if no legal charge of crime is entitled to discharge, 129.
at hearing is entitled to be represented by counsel, 253.
competent witness in own behalf, when, 257.

AFFIDAVIT—

must be presented to governor to confer jurisdiction, 129, 310.
charge of crime may be by, 130.
certified copy of, must accompany the demand, 130.
not conclusive as to commission of crime, 149-150.
distinguished from an indictment, 149.
must charge the crime alleged explicitly, 149.
insufficiency of, ground for discharge of fugitive, 150.
based on information and belief void, 151.
no crime shown in, no rendition, 152, 232.
failure to annex, to requisition, fatal, 270.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

AGENT OR MESSENGER—

- not officer of Federal Government, 56, 279.
- representative of the executive of demanding State, 56.
- not liable to fugitive for damages, 56.

ALABAMA—

- fee for honoring requisition, 97.
- rules relating to interstate rendition, 97, 98.
- habeas corpus* reviewable by Supreme Court, 271.
- text of statute on fugitives from justice, 331-334.

ALASKA—

- no fee or regulations, 123.
- text of statutes on fugitives from justice, 487-490.

ALIBI—

- to defeat rendition, when admissible, 203, 204.
- proof of, a distinction, 204.
- South Carolina rule discussed, 204, 205.
- supreme court of New York on, 206-215.

AMENDMENTS—(See *Constitution of the United States*.)

ANNULMENT—(See *Revocation*.)

- by governor of warrant of rendition, 159.

APPEAL—

- governor's action in demanding State not subject to, 62, 93.
- final, to the U. S. Supreme Court, 270.
- States holding *habeas corpus* reviewable, 271.
- States holding *habeas corpus* not reviewable, 273.

APPLEYARD V. MASSACHUSETTS—

- cited, 72, 83, 209, 268, 276, 300, 304, 306, 312, 322.
- decision discussed and reviewed, 300-302.

ARIZONA—

- no fee for honoring requisition, 98.
- no special rules in rendition, 98.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

ARIZONA—*Continued.*

habeas corpus reviewable by Supreme Court, 271.
text of statutes on fugitives from justice, 338-340.

ARKANSAS—

fee for honoring requisition, 98.
habeas corpus reviewable by Supreme Court, 271.
text of statutes on fugitives from justice, 334-337.

ARREST OF FUGITIVE—

before executive demand, 161.
with or without warrant, when legal, 161-162.
when illegal, Michigan rule, 163-164.
from a constitutional viewpoint, 164.
duty of officer making, 165-167.
the rule in New York, 166.
guilty and innocent alike liable to, 167.

ARTICLES OF CONFEDERATION—

third compact on interstate rendition, 183.
difference between, and the Constitution on fugitives, 184.

ASYLUM—

fugitive in interstate rendition no right to, 180.

ATTORNEY GENERAL RANDOLPH—

on interstate rendition, 27-30.

AUTHENTICATION—

force and effect of, 124.
act of Congress of 1793 as to, 124.
power and authority of governor as to, 125.
object and purpose of, 126.
presumptions as to, 127.

AUTHORITY—

source of, in interstate rendition, 10-11.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

B.

BAIL—

fugitive who has forfeited, subject to rendition, 69.
may be allowed pending *habeas corpus* proceedings, 236.
of person held to answer, discharged by rendition, 237.

BASSING V. CADY—

cited, 304, 322.
doctrine discussed, 304-306.

BASTARDY—

not such a crime for which rendition may be asked, 130.

BURDEN OF PROOF—

on *habeas corpus* hearing in rendition, 256.
fugitive denying identity, is on respondent, 257.

C.

CALIFORNIA—

executive rules on rendition, 98, 99, 100.
fee for honoring requisition, 98.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 340-343.

CERTIFIED COPIES—

of charge of crime sufficient, 130.
in rendition when conclusive, 255.
how produced in *habeas corpus* proceedings, 256.
agent not legally required to produce, 257.

CERTIORARI—

cannot force production of papers by, 157.

CHARGE OF CRIME—

in interstate rendition, meaning of, 129.
statutory requirements of, 130, 131.
must be by indictment or affidavit, 130.
validity of an information as, 131.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

CHARGE OF CRIME—*Continued.*

Supreme Court's estimate of information as, 132.
an extra judicial opinion, without authority, 133.
Federal legislation on, construed, 135.
the Hart case on, sound in reason, 135, 136.
an indictment substantially failing as, void, 144.
failure to annex, fatal to rendition, 270.

CIVIL ACTIONS—

when exempt from service of process in, 197.
returned fugitive and process in, 198.
induced by fraud to return and, 199.
suitors and witnesses entitled to immunity in, 200, 201.
the rule as to fugitives in New York, 201.

COLORADO—

executive rules on rendition, 100.
fee for honoring requisition, 100.
habeas corpus reviewable by Supreme Court, 271.
text of statutes on fugitives from justice, 343-346.

COMMITMENT—

see U. S. Rev. Stat., secs. 5278 and 5279 as to, 25.
text of State statutes as to law of, in each State, 331-403.

COMMON LAW—

presumption as to its interpretation, 252.

COMPLAINT—

not possessing elements of affidavit, insufficient, 268.

COMPTON V. ALABAMA—

cited, 309; 314.
doctrine discussed, 309-311.

CONCURRENT JURISDICTION—

when State and Federal courts have, 279.
see *Robb v. Connolly*, 279, 280.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

CONGRESS—

act of 1793, relating to rendition, 24, 25.
has exclusive power over interstate rendition, 44.

CONNECTICUT—

fee for honoring requisition, 100.
habeas corpus reviewable by Supreme Court, 271.
text of statutes on fugitives from justice, 347-351.

CONSTITUTION OF UNITED STATES—

provision of, for interstate rendition, 13.
supremacy of, 20.
as interpreted by the highest court, 18, 19, 289-291.

CONSTRUCTIVE PRESENCE—

not recognized in rendition, 75, 76.
as settled by U. S. Supreme Court, 76.

CONTEMPT—

when in rendition person guilty of, 279, 280.
see *Robb v. Connolly*, 279.

COOK V. HART—

cited, 75, 283, 289, 291.
doctrine discussed, 283-285.

COSTS—

must be paid by demanding State, 26.
failure to pay, does not effect legality, 312.

COUNSEL—

fugitive entitled to be heard by, 253.

COURT—

rulings follow disputes, 8.
right to examine papers on which warrant issued, 235, 236.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

CRIMES—

violations of any criminal law of State, 21.
statutory and common law offenses included, 21, 22.
constructively committed, no rendition, 75, 76.
specifically charged, ground for rendition, 129.
charged necessary to jurisdiction in rendition, 129, 130.
must be a, in State where charged, 130.
to be charged by affidavit valid, 130, 149.
charge of, by *ex officio* information questioned, 131, 132.
date when committed essential, 144, 145, 218.
all offenses, felony or misdemeanor, extraditable, 280.

CULLOM, GOVERNOR—

on executive duty in rendition, 59-61.

D.

DATE OF CRIME—

must be a fixed period in rendition, 144, 145.
or neighborhood thereof says the highest court, 203.

DEBT—

ruling of the Michigan Supreme Court, 223.
ruling of the Ohio Supreme Court, 224.
rendition for purpose of collecting, a fraud, 224.
duty of governor in this regard, 227.

DELAWARE—

fee for honoring requisition, 100.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 351-354.

DELIVERY—

when imperative in interstate rendition, 9.
obligation of, when created, 59.

DEMAND—

rule as set forth by U. S. Supreme Court, 82, 91.
formal and official, its requisites, 90.
positive proof of charge of crime required, 91.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

DENNISON V. CHRISTIAN—

cited, 150, 213, 293.
doctrine of, discussed, 293-295.

DISCRETION—

the rule as understood by Gov. Cullom, 59, 61.
demanding State executive may exercise, 91, 92.
governor of asylum State has no right of, 93.

DISCHARGE—

when fugitive entitled to his, 257.
order of, may be afterwards vacated, 258.
effect of vacation of order of, 258.

DISTRICT OF COLUMBIA—

special law by Congress relating to, 31.
return of fugitives to, 32.
section 1014, U. S. Rev. Stat. and the, 33.
when ceded to United States as, 34.
is it a "district" under the law, 34, 35.
did Congress muddle the whole matter, 35, 36.

DREW V. THAW—

cited, 218, 316.
doctrine of, discussed, 316-319.

"DUTY"—

executive, under act of 1793, defined, 9.

E.

ESCAPED CONVICT—

when a fugitive from justice, 83, 84.

EVIDENCE—

of flight must be positive, 64, 65.
courts may hear oral, outside of papers, 71, 72.
accused may show by, that he is not a fugitive, 72, 73.
in rendition no rules of, prescribed by Congress, 73, 74.
sufficiency of, as to flight, 81.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

EVIDENCE—*Continued.*

recitals in demand must be supported by, 94.
when fugitive may give, in own behalf, 257.
strict common law, not necessary, 292.

EXCLUSIVE JURISDICTION—

Federal courts have not, in rendition, 280.

EXECUTIVE AUTHORITY—(See *Governor.*)

EX PARTE HOFFSTOT—

cited, 268, 312.
doctrine discussed, 312-314.

EX PARTE REGGEL—

cited, 21, 67, 72, 73, 75, 194, 209, 248, 268, 280, 283, 289, 293, 302,
304, 312, 322.
doctrine of discussed, 280-281.

EXPENSES OF RENDITION—

must be paid by demanding State, 312.

EXTRADITABLE OFFENSES—

in international extradition, and rendition, 3.

F.

FAIR TRIAL—

assumed, unless proof to contrary, 312.

FEDERAL HABEAS CORPUS—(See *Habeas Corpus.*)

FEDERAL COURTS—

have concurrent power with State courts in rendition, 247.
form of petition for *habeas corpus* to, 258-260.
form of writ of *habeas corpus* of, 260.
duty of, as defined by the highest court, 299.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

FEEES OF STATES—

for arrest and surrender of fugitives, 96-123.
State regulations on, in rendition, 97-122.

FELONY—

as discussed by Attorney General Randolph, 27.
as defined by the U. S. Supreme Court, 278.

FLIGHT—

misconception of the law as to, 64-67.
the Constitution and fugitives, 70.
act of Congress of 1793 as to, 70.
proof of, must be positive in rendition, 82.
the doctrine of, as discussed in early cases, 85.

FLORIDA—

fee for honoring requisition, 100.
habeas corpus reviewable by Supreme Court, 271.
text of statutes on fugitives from justice, 354-356.

FORMS—

of petition for *habeas corpus* to U. S. judge, 258, 259.
of writ of *habeas corpus* in U. S. court, 260.
of petition for *habeas corpus* State court or judge, 261.
of affidavit to petition for writ, 262.
of State writ of *habeas corpus*, 263.
of officer's return to writ, 264.
of prisoner's or fugitive's traverse, 264, 265.

FRAUD—

induced by, to come to a place and civil process, 199, 200.
if rendition not in accord with law it is, 218-220.

FUGITIVES FROM JUSTICE—

misconception of the law as to, 64.
Roy Blackburn case and illegal rendition, 65, 66, 67.
who are held to be, 68, 69, 81.
doctrine as to who may be, discussed, 70.
a noticeable difference of opinion, 71.
final decision by U. S. Supreme Court, 72, 73, 74.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

FUGITIVES FROM JUSTICE—*Continued.*

jurisdictional defects how waived by, 75.
no constructive presence by, in rendition, 75.
presence in State of, necessary when crime is committed, 77.
the fact that one is, is jurisdictional, 77.
when accused not a, in rendition, 77.
rendited for one crime, may be tried for another, 185, 188.
accused and charged with crime, a distinction, 270.
whether one is a, is a question of fact, 291.
rule as to, in the Pettibone case, 298-300.

G.

GEORGIA—

no fee for honoring requisition, 101.
habeas corpus reviewable by Supreme Court, 271.
text of statutes on fugitives from justice, 356-358.

GENERAL GOVERNMENT—

and the States of the Union, 20.

GOOD FAITH—

of the prosecution in rendition, discussed, 216-228.

GOVERNOR—

cannot be forced to honor requisition, 9.
power of, as to rendition, from Federal law, 55.
no delegation of power to another, 57.
warrant of rendition void unless signed by, 58.
demand for rendition of fugitive discretionary, 62.
surrender of fugitive by, not discretionary, 63.
carelessness of, in discharging duty, 67.
may not honor demand without proof of crime and flight, 82.

GREAT SEAL—

warrant of rendition must bear impress of, 155, 269.

GUILT OR INNOCENCE—

of fugitive, no such inquiry in rendition, 229.
when proof of crime is prohibited, 230.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

H.

HABEAS CORPUS—

jurisdiction of Federal and State courts, 235, 236.
Federal law on rendition silent as to, 237.
no legislative power to abrogate, 237.
State courts power to issue, come from statutes, 237, 238.
U. S. Supreme Court on right of, 246, 250.
prompt relief from unlawful arrest by, 252.
first step towards securing a writ of, 253.
States wherein writ of, is reviewable, 271-273.
States wherein writ of, is not reviewable, 273, 274.
appropriate proceeding in rendition, 303.

HAWAII, TERRITORY OF—

no fee or special regulations, 123.
law on rendition applicable, 493.

HAYWOOD V. NICHOLS—

cited, 300.

HEARING—

fugitive no constitutional right to, before governor, 71, 292.
on *habeas corpus* proceedings in rendition, 256, 257.

HYATT V. PEOPLE EX REL. CORKRAN—

cited, 70, 71, 75, 82, 154, 156, 171, 210, 241, 277, 295, 302, 304, 307,
312, 314, 316, 322.
doctrine discussed, 289-293.

I.

IDAHO—

fee for honoring requisition, 101.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 358-360.

IDENTITY—

of fugitive in rendition all important, 168.
law of, in New York, 169-171.
law of, in Pennsylvania, 171-173.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

IDENTITY—*Continued.*

- law of, in Indiana, 173-174.
- law of, in Ohio, 174-175.
- law of, in Kentucky, 176.
- law of, in Delaware, 176.
- rule in other States as to, 177.
- how question of, raised in rendition, 177.
- in absence of proof of, *prima facie* case conclusive, 178.
- fugitive in custody his, must be positive, 179.

ILLINOIS—

- fee for honoring requisition, 101.
- habeas corpus* not reviewable by Supreme Court, 273.
- text of statutes on fugitives from justice, 361-367.

IMMUNITY—

- from criminal prosecution no, in rendition, 185.
- Judge Cooley's doctrine of, 186.
- returned fugitive and civil process, 198.
- induced by fraud to return and, 199.
- suitors and witnesses entitled to, 200.

INDIANA—

- fee for honoring requisition, 101.
- habeas corpus* reviewable by Supreme Court, 272.
- text of statutes on fugitives from justice, 367-373.

INDICTMENT—

- as a charge of crime in rendition, 142.
- date when crime is committed as fixed in, 144-145.
- attempt to evade the Federal law as to, 152-154.
- information instead of, not favored, 269.
- failure to annex copy of, to demand fatal, 270.
- dispensing with time and venue in, 286-287.
- rule of the U. S. Supreme Court as to, 289-291.
- one may be indicted but not extradited, 313.

INFORMATION—

- validity of, as a charge of crime, 131, 132.
- U. S. Supreme Court's estimate of an, 132, 133.
- attorney-general of Illinois on validity of, 140, 141, 142.
- rendition based on, must be sworn to, 269.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

INFORMATION AND BELIEF—

not sufficient basis for charge of crime in rendition, 269.

INNES V. TOBIN—

reviewed, 320, 321, 322.

INTERNATIONAL EXTRADITION—

and interstate rendition difference, 2.

INTERSTATE RENDITION—

meaning of the term, 1.

"extradition" discussed, 2.

misapplication of the word "extradition," 2.

international extradition and, difference, 2.

authorities sustaining the use of, 4, 5.

early disputes on, and results thereof, 5.

Congress ends controversies by act of 1793, 6, 7.

court rulings follow disputes on, 8.

Kentucky v. Dennison, its authority considered, 9.

U. S. Supreme Court ruling controls in all, 10.

power of State in, to arrest and surrender fugitives, 10, 11.

slavery the cause of disputes on, 11.

unadjudicated questions on, 12.

historically considered, 15, 16.

distinction between, and "extradition," 17.

IN RE STRAUSS—

cited, 133, 134.

doctrine discussed, 295, 296, 297.

IOWA—

executive rules on rendition, 101, 102.

fee for honoring requisition, 101.

habeas corpus reviewable by Supreme Court, 272.

text of statutes on fugitives from justice, 373-377.

J.

JUDICIARY ACT—

section 33 of, passed by Congress 1789, 35, 323, 324.

authority for removal of Federal prisoners, 36, 324.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

JUSTICES OF THE PEACE—(See *Magistrate*.)

JURISDICTION—

early Federal view on, 237-239.

Federal and State courts alike have, in rendition, 280.

K.

KANSAS—

no fee for honoring requisition, 102.

habeas corpus reviewable by Supreme Court, 272.

text of statutes on fugitives from justice, 377-384.

KENTUCKY—

fee for honoring requisition, 102.

habeas corpus reviewable by court of appeals, 272.

text of statutes on fugitives from justice, 384-386.

KENTUCKY V. DENNISON—

cited, 3, 8, 18, 19, 21, 50, 62, 93, 125, 194, 281, 283, 291, 295, 302, 319,
322.

authority of, considered, 9, 10.

discussion of, 278, 279.

KER V. ILLINOIS—

doctrine discussed, 191, 192.

cited, 284.

KOPEL V. BINGHAM—

reviewed, 308, 309.

L.

LASCELLES V. GEORGIA—

cited, 3, 5, 22, 188, 192, 322.

reviewed and doctrine discussed, 285, 286.

LEGISLATION BY STATES—

Federal law supreme in rendition, 43.

validity of, generally upheld, 44, 45.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

LEGISLATION BY STATE—*Continued.*

U. S. Supreme Court on, 46.
legality of, as viewed by State courts, 47-54.

LOUISIANA—

fee for honoring requisition, 102.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 386-388.

M.

MAGISTRATE—

under rendition law, defined, 310.

MAINE—

no fee for honoring requisition, 102.
executive rules for rendition, 102.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 388-390.

MANDATE—(See *Warrant of Rendition.*)

MARBLES V. CREECY—

cited, 276.
reviewed, 311, 312.

MARYLAND—

no fee for honoring requisition, 102.
executive rules relating to rendition, 102, 103, 104.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 390-391.

MASSACHUSETTS—

no fee for honoring requisition, 104.
executive rules relating to rendition, 104.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 391-394.

McNICHOLS V. PEASE—

cited, 72, 73, 81, 145, 147, 171, 209, 212, 214, 306, 312.
doctrine discussed, 302-304.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

MICHIGAN—

fee for honoring requisition, 104.
executive rules relating to rendition, 104.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 394-397.

MINNESOTA—

fee for honoring requisition, 104.
executive rules relating to rendition, 104.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 397-401.

MISSISSIPPI—

no fee for honoring requisition, 104.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 401-402.

MISSOURI—

fee for honoring requisition, 104.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 403-407.

MOB VIOLENCE—

positive proof of, justifies denial, 270.
fair trial assumed, unless proof to contrary, 312.

MONTANA—

fee for honoring requisition, 105.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 408-410.

MOORE, JOHN BASSETT—

on interstate rendition, 4.

MOREY V. WHITNEY—

cited, 300.

MOYER V. NICHOLS—

cited, 300.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

MUNSEY V. CLOUGH—

cited, 68, 78, 83, 147, 160, 209, 211, 304, 307, 312, 319.
reviewed and discussed, 292, 293.

N.

NEBRASKA—

fee for honoring requisition, 105.
executive rules relating to rendition, 105.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 410-412.

NEVADA—

no fee for honoring requisition, 105.
habeas corpus not reviewable by Supreme Court, 274.
text of statutes on fugitives from justice, 412-415.

NEW HAMPSHIRE—

no fee for honoring requisition, 105.
executive rules relating to rendition, 105.
habeas corpus not reviewable by Supreme Court, 273.
text of statutes on fugitives from justice, 415-417.

NEW JERSEY—

no fee for honoring requisition, 105.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 418-420.

NEW MEXICO—

fee for honoring requisition, 105.
executive rules relating to rendition, 105.
habeas corpus not reviewable by Supreme Court, 274.
text of statutes on fugitives from justice, 420-424.

NEW YORK—

no fee for honoring requisition, 105.
executive rules relating to rendition, 105.
habeas corpus reviewable by court of appeals, 272.
text of statutes on fugitives from justice, 424-428.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

NORTH CAROLINA—

fee for honoring requisition, 105.
executive rules relating to rendition, 105.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 428-431.

NORTH DAKOTA—

fee for honoring requisition, 105.
habeas corpus not reviewable by Supreme Court, 274.
text of statutes on fugitives from justice, 431-435.

O.

OHIO—

fee for honoring requisition, 105.
executive rules relating to rendition, 105, 106, 107, 108, 109.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 435-436.

OKLAHOMA—

fee for honoring requisition, 109.
executive rules relating to rendition, 109.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 437-440.

OREGON—

fee for honoring requisition, 109.
executive rules relating to rendition, 109, 110, 111.
habeas corpus reviewable by Supreme Court, 272.
text of statutes on fugitives from justice, 440-445.

"OTHER CRIME"—(See *Crimes*.)

P.

PAPERS—

the requisition and accompanying, must be regular, 90, 91.
sufficiency of requisition and, main question, 91.
absence of proper, makes void requisition, 92.
on hearing how, may be produced, 255.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

PAROLED CONVICT—

when a fugitive from justice, 83, 84.

PERSONAL PRESENCE—

necessary in State when crime committed, 77, 315.
questions settled by U. S. Supreme Court, 81, 82, 306.

PENNSYLVANIA—

fee for honoring requisition, 111.
executive rules relating to rendition, 111.
habeas corpus not reviewable by Supreme Court, 274.
text of statutes on fugitives from justice, 445-447.

PETITION FOR HABEAS CORPUS—

Federal and State form of, 258-261.

PETTIBONE V. NICHOLS—

cited, 52, 72, 83, 218, 304, 312, 319.
doctrine discussed, 298-300.

PHILIPPINE ISLANDS—

no fee for honoring requisitions, 123.
rendition of fugitives to and from, 326.
act of Congress February 9, 1903, 327.

PIERCE V. CREECY—

cited, 3, 316, 319.
doctrine discussed, 306-308.

PEARCE V. TEXAS—

cited, 289, 293.
reviewed, 286, 287.
doctrine discussed, 143, 144.

PLEADING AND PRACTICE—

accused entitled to be represented by counsel, 253.
rights may be waived by lack of knowledge of, 253.
rules of, in rendition procedure, 254.
purpose of petition for *habeas corpus*, 254.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

PLEADING AND PRACTICE—*Continued.*

respondent's return to the writ, 254.
the fugitive's or relator's traverse, 255.
the joinder of issue and hearing, 256.
how papers may be produced, 255, 256.
scope of inquiry on *habeas corpus*, 257.
burden of proof rests on the accused, 257.
identity burden shifts to respondent, 257.
order of discharge may be vacated, 258.

PORTO RICO—

no fee or special regulations, 123.
rendition of fugitives to and from, 309.
territorial statutes of, on fugitives, 490-493.

POWER OF STATES—

to arrest and surrender fugitives, 10.

PRESUMPTION—

as to law in another State, in absence of proof, 252.

PRISONER—(See *Accused and Fugitives from Justice.*)

PROCEDURE—(See *Pleading and Practice.*)

Q.

QUESTIONS—

unsettled, so far by U. S. Supreme Court, 12.
not covered by laws of the United States, 44.

R.

RECORD—(See *Papers.*)

REMOVAL LAW—

section 1014, U. S. Revised Statutes, 36, 324.

RENDITION—

and extradition, a wide distinction, 17.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

RENDITION OF WITNESSES—

from and to New York and other States, 86-88.

REQUISITION—(See *Demand*.)

formal and official demand in rendition, 90.
rule as to essentials fixed by Supreme Court, 91.
left to governor's discretion in making, 92.
legality of, question for governor of asylum State, 92-93.
no power in Federal government to force governor to honor, 93.
governor's failure to issue not reviewable, 93.
copy of indictment or affidavit must accompany, 94.
based on forgery, Illinois case, 95-96.
fees for honoring and rules by States, 97-122.

RESCUING FUGITIVE—

penalty for, Federal statutes, 26.

RETURN OF FUGITIVE—

method of, not open to complaint, 189-190.

RETURN TO HABEAS CORPUS WRIT—

respondent's, must show why he holds fugitive, 254.

REVOCATION OF WARRANT—

a noted Illinois case of, 59-61.
governor may order, and issue alias, 159.

RHODE ISLAND—

no fee for honoring requisition, 111.
executive rules relating to rendition, 111, 112, 113.
habeas corpus not reviewable by Supreme Court, 274.
text of statutes on fugitives from justice, 448-450.

ROBB V. CONNOLLY—

cited, 56, 81, 153, 241, 247, 252, 253, 283, 289, 291, 304.
doctrine discussed, 279-280.

ROBERTS V. REILLY—

cited, 72, 75, 82, 91, 143, 145, 241, 247, 289, 291, 293, 295, 302, 304,
307, 312, 316, 319, 322.
doctrine discussed, 281-283.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

RULES AND REGULATIONS—

as to interstate rendition by the States, 97-122.

S.

SOUTH CAROLINA—

no fee for honoring requisition, 113.

habeas corpus reviewable by Supreme Court, 272.

text of statutes on fugitives from justice, 450-452.

SOUTH DAKOTA—

fee for honoring requisition, 113.

habeas corpus reviewable by Supreme Court, 272.

text of statutes on fugitives from justice, 452-455.

STATE COURTS—

Federal rule on rendition as to, 91.

STATE LEGISLATION—(See *Legislation by the States.*)

STATE OFFICER—

agent or messenger in rendition is only, 56, 279.

STATUTES—

Federal, in aid of Constitution on rendition, 25-26.

State, relating to fugitives from justice, 331-492.

STRASSHEIM V. DAILEY—

cited, 84, 85, 203.

doctrine discussed, 314-316.

SURRENDER—

when the obligation to, is absolute, 4.

SUITORS AND WITNESSES—(See *Immunity.*)

T.

TENNESSEE—

fee for honoring requisition, 113.

habeas corpus reviewable possibly, 272.

text of statutes on fugitives from justice, 455-458.

(NUMBERS REFER TO PAGES OF THIS BOOK.)

TEXAS—

- fee for honoring requisition, 113.
- habeas corpus* reviewable by court of last resort, 272.
- text of statutes on fugitives from justice, 458-462.

TIME—

- date of crime as fixed in charge, 77.
- one not in State at, of crime, not a fugitive, 144-145.

"TREASON, FELONY, OR OTHER CRIME"—

- as defined by U. S. Supreme Court, 8.

U.

UNADJUDICATED QUESTIONS—

- relating to interstate rendition, 12.

UNITED STATES SUPREME COURT—

- tribunal of last resort in rendition, 10.
- jurisdiction essential, 277.
- has no extra-jurisdictional power, 277.
- takes judicial notice of certain facts, 304.

UTAH—

- no fee for honoring requisition, 113.
- habeas corpus* not reviewable by Supreme Court, 274.
- text of statutes on fugitives from justice, 462-466.

V.

VERMONT—

- no fee for honoring requisition, 113.
- rules of the executive on rendition, 113, 114, 115.
- habeas corpus* reviewable by Supreme Court, 272.
- text of statutes on fugitive from justice, 466-468.

VIOLENCE—(See *Mob Violence*.)

(NUMBERS REFER TO PAGES OF THIS BOOK.)

VIRGINIA—

- fee for honoring requisition, 116.
- executive rules on rendition, 116.
- habeas corpus* reviewable by highest court, 273.
- text of statutes on fugitives from justice, 468-472.

W.

WARRANT OF RENDITION—

- executive process, its force and power, 155.
- must be legally issued, 156.
- recitals *prima facie* evidence of legality, 157.
- who may serve, 158.
- entitled to no greater sanctity than other process, 158.
- revocation by governor when, 159.
- rules relating to, 160.
- definition of, 288.

WASHINGTON—

- fee for honoring requisition, 116.
- habeas corpus* reviewable by Supreme Court, 273.
- text of statutes on fugitives from justice, 472-475.

WEST VIRGINIA—

- fee for honoring requisition, 116.
- executive rules relating to rendition, 116, 117, 118, 119.
- habeas corpus* reviewable by Supreme Court, 273.
- text of statutes on fugitives from justice, 475-479.

WHITTEN V. TOMLINSON—

- cited, 143.
- reviewed, 288, 289.

WISCONSIN—

- no fee for honoring requisition, 120.
- executive rules on rendition, 120, 121, 122.
- habeas corpus* reviewable by Supreme Court, 273.
- text of statutes on fugitives from justice, 479-485.

WITNESSES—(See *Rendition of Witnesses*.)

(NUMBERS REFER TO PAGES OF THIS BOOK.)

WORDS AND PHRASES—

- "rendition" defined, 1.
- "extradition" meaning of, 1, 2, 3, 4.
- "treason, felony, or other crime," defined, 8.
- "duty" in act of Congress of 1793, 9.
- "a person charged" defined, 27, 28.
- "or other crime," defined, 28.
- "who shall flee from justice," explained, 28.
- "found in another State," meaning of, 29.
- "the State having jurisdiction," explained, 29.
- "fugitive from justice," defined, 68, 69, 81.
- "executive discretion," meaning of, 62, 93, 94.
- "certified as authentic," meaning of, 124.
- "in due form," meaning of, 127.
- "information," defined, 131, 132, 133.
- "charge of crime," defined, 135, 297.
- "indictment," defined, 142, 143, 144.
- "affidavit," defined, 148.
- "governor's warrant of rendition," meaning of, 155.
- "identity," meaning of, 168.
- "alibi," meaning of, 203, 204.
- "good faith," scope of inquiry, 216, 217.
- "complaint," meaning of, 268.
- "great seal," meaning of, 155, 269.

WYOMING—

- fee for honoring requisition, 122.
- executive rules relating to rendition, 122.
- habeas corpus* not reviewable by Supreme Court, 174.
- text of statutes on fugitives from justice, 485-487.

